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ROYAL COMMISSION OF INQUIRY INTO CERTAIN  
DEATHS AT THE HOSPITAL FOR SICK CHILDREN AND  
RELATED MATTERS.

Hearing held  
8th floor  
180 Dundas Street West  
Toronto, Ontario

The Honourable Mr. Justice S.G.M. Grange	Commissioner
P.S.A. Lamek, Q.C.	Counsel
E.A. Cronk	Associate Counsel
Thomas Millar	Administrator

Transcript of evidence  
for

April 4, 1984

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2 DEATHS AT THE HOSPITAL FOR SICK CHILDREN  
AND RELATED MATTERS.

3

4 Hearing held on the 8th Floor,  
5 180 Dundas Street West, Toronto,  
6 Ontario, on Wednesday, the 4th day  
7 of April, 1984.

8

9 THE HONOURABLE MR. JUSTICE S.G.M. GRANGE - Commissioner

10 THOMAS MILLAR - Administrator

11 MURRAY R. ELLIOT - Registrar

12

13 APPEARANCES:

14 P.S.A. LAMEK, Q.C. ) Commission Counsel  
15 E. CRONK )  
16 D. HUNT ) Counsel for the Attorney  
17 L. CECCHETTO ) General and Solicitor General  
of Ontario (Crown Attorneys  
and Coroner's Office)  
18 I.J. ROLAND ) Counsel for The Hospital for  
19 M. THOMSON ) Sick Children  
R. BATTY )  
20 B. PERCIVAL, Q.C. ) Counsel for The Metropolitan  
21 D. YOUNG ) Toronto Police  
22 K. CHOWN Counsel for numerous Doctors  
23 at The Hospital for Sick  
24 F. KITELY Counsel for the Registered  
Nurses' Association of Ontario  
and 35 Registered Nurses at  
The Hospital for Sick Children

25 (Cont'd) ..





1

APPEARANCES: (Continued)

2

J. SOPINKA, Q.C. ) Counsel for Susan Nelles -  
D. BROWN ) Nurse

4

G. R. STRATHY ) Counsel for Phyllis Trayner -  
E. FORSTER ) Nurse

5

J.A. OLAH ) Counsel for Janet Brownless -  
A. ARNOLD ) R.N.A.

6

B. KNAZAN Counsel for Mrs. M. Christie -  
R.N.A.

8

M. MANNING, Q.C. ) Counsel for Mr. & Mrs.  
S. LABOW ) Gosselin, Mr. & Mrs. Gionas,  
Mr. & Mrs. Inwood, Mr. & Mrs.  
Turner, Mr. & Mrs. Lutes,  
and Mr. & Mrs. Murphy  
(parents of deceased children)

11

F.J. SHANAHAN Counsel for Mr. & Mrs. Dominic  
Lombardo (parents of deceased  
child Stephanie Lombardo);  
and Heather Dawson (mother of  
deceased child Amber Dawson)

13

W.W. TOBIAS Counsel for Mr. & Mrs. Hines  
(parents of deceased child  
Jordan Hines)

15

J. SHINEHOFT Counsel for Lorie Pacsai and  
Kevin Garnet (parents of  
deceased child Kevin Pacsai).

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A.1

BmB. 1

jc

2 ---- Upon commencing at 10:00 a.m.

3 THE COMMISSIONER: Yes, Mr. Strathy.

4 MR. STRATHY: Thank you.

5 SUSAN NELLES, Resumed

6 CROSS-EXAMINATION BY MR. STRATHY (CONTINUED):

7 Q. Miss Nelles, you mentioned at  
8 the end of the day yesterday your concern perhaps  
9 in retrospect about the condition of Baby Pacsai  
10 when you returned to him after the Manojlovich  
11 arrest. I would like to ask you a few questions to  
begin with about Baby Pacsai.

12 First of all, that baby was in Room  
13 431 with some other babies, is that right?

14 A. That's right.

15 Q. But the only baby you had in  
16 431 was Pacsai?

17 A. Actually assigned to me, yes.

18 Q. Yes. That was the only one  
under your direct responsibility?

19 A. Well, I had the medication and  
20 treatments for the other children in the room as well.

21 Q. I see. And Baby Pacsai as I  
22 understand it was not on shared nursing care nor was  
he on constant nursing care?

23 A. No, he was not.

24

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A.2

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10 relieved?

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Q. And am I correct that when you had a baby who was in that situation, that is, neither on constant or shared it was quite permissible for you to leave the child alone for a period of time?

A. Certainly, yes.

Q. So for example if it came time for your break and you had a baby, a particular baby who was not on either of those intensive methods of care, you could leave that child without being

A. That's right.

Q. Do I also understand correctly that constant nursing care and shared nursing care were only done on doctor's orders; that is, it was up to the doctor to decide?

A. They had to write an order for constant care or shared care nursing, yes.

Q. So, it was up to the doctor to decide whether a particular child's condition warranted that?

A. Well, I think it was usually the physician in discussion with the head nurse.

Q. But the final order came from the doctor?

A. Right.





A.3

1

2

Q. Now, do you recall that night,  
that is, the night in which Baby Pacsai died, do you  
recall what other nurse had babies in Room 431?

5

A. Mrs. Lyons had the rest of the

babies in that room.

6

7

Q. What is her first name?

8

A. Yvonne.

9

Q. Yvonne. And were the babies that  
she had in 431 - how many were there, do you recall?

10

A. I believe it was two or three.

11

Q. Were those babies on either  
constant or shared nursing care?

12

13

A. No, they were not.

14

Q. Now, you left Pacsai's room, 431,  
at the time you heard Manojlovich's arrest?

15

16

A. Right.

17

18

Q. And you went to the Manojlovich's  
room and you stayed there for a period of time through-  
out the arrest?

19

20

A. That's right.

21

Q. And did not return to Pacsai  
until after Baby Manojlovich had died and after you  
had attended to the baby after the death?

22

23

A. Right.

24

Q. I'm sorry, I may have just not

25





A.4

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2

picked up from your evidence how long it was that you  
were with Baby Manojlovich?

4

A. I'd say that I was gone from  
Room 431 for about an hour.

5

Q. Now, when you left Room 431 to  
go to Baby Manojlovich, do you recall whether Mrs.  
Lyons was in the room with her babies?

8

A. I don't remember.

9

Q. It's possible I take it that she

10 was there?

11

A. Yes, but she also had children  
in another room as well as 431.

12

Q. But you don't recall whether she  
was there at the time?

13

A. I don't remember, no.

14

Q. What about when you returned  
after the Baby Manojlovich's death, was Mrs. Lyons  
there then?

15

A. Yes, I believe she was.

16

Q. Well now just in respect of your  
first answer that you don't recall Mrs. Lyons being  
there when you left, I'd like to read to you if I may  
a portion of the evidence from the preliminary inquiry.  
I'm referring to Volume 8, page 109, Mr. Commissioner.  
This is the evidence of Mrs. Lyons at your preliminary

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A.5

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inquiry and I believe of course that you sat through  
the evidence yourself at the preliminary inquiry?

4

A. Yes, I did.

5

6

7

Q. You may not recall this piece  
of evidence because it was a long time ago for you but  
let me read it to you. This is at line 20, page 109,  
the question by the Crown Attorney to Mrs. Lyons:

8

"Q. Do you remember a baby who died  
down the floor ... "

9

and they called the child Sanojlovich.

10

"A. Yes.

11

"Q. And when that baby died did a  
lot of the nurses go down to where he  
was?

12

"A. Yes.

13

"Q. Do you know if Susan Nelles went  
down there, did she go to where  
Manojlovich was?

14

"A. Yes, I think she did.

15

"Q. Did you stay in Room 431 when she  
left?

16

"A. Yes, I did.

17

"Q. Did anyone else come in while she  
was gone to look after Baby Pacsai."

18

Now, I think that is a misprint because

19

20





A.6

1

2 I think it was Manojlovich that you went to look  
3 after, a misstatement.

4

"A. No.

5

"Q. What condition was Baby Pacsai in  
6 when she was gone?

7

"A. He was sleeping.

8

"Q. He was sleeping?

9

"A. Yes.

10

"Q. Did she come back after the  
Sanojlovich baby died?

11

"A. Yes, she came back.

12

"Q. What did she do when she came  
back?

13

"A. I can't remember.

14

"Q. Did you see her giving Kevin Pacsai  
anything to drink or eat?

15

"A. I can't remember.

16

"Q. Did you see her give any drugs  
to the Pacsai baby?

17

"A. I can't remember."

18

Now, it appears from Mrs. Lyons'

19

evidence that she was in the room when you left to go  
20 to Baby Manojlovich and it appears that she was also  
21 there when you returned and it appears, at least on  
22 my reading of it, that she was there throughout the  
23

24

25





A.7

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2 time that you were away. Did that refresh your memory  
3 at all as to whether Mrs. Lyons was in the room when  
4 you left to go to see Manojlovich?

5 A. I don't remember her being - as  
6 I say I don't remember whether she was there or not  
when I left.

7

8 Q. Now, after Baby Manojlovich  
9 died you mentioned that Mrs. Trayner was present at  
10 the arrest, she was standing at the door and she went  
11 off from time to time. I gather at arrest you usually  
12 did have someone who was a runner to go and fetch  
things that were needed in the arrest?

13

A. Sometimes, yes.

14

15 Q. After the baby died you mentioned  
16 that you attended to the baby, preparing the child  
17 for viewing by the parents?

18

A. No, I did not.

19

20 Q. I'm sorry, excuse me. Perhaps  
I went too far. Do I understand correctly that you  
cleaned up the child after the arrest?

21

22 A. No, I did not, I helped clean  
up the room.

23

24 Q. I see, excuse me. Do you know  
25 who actually did clean up the child after the arrest?

A.

I would imagine it would have





A.8

1

2        been the nurse assigned to her, which was Debbie  
3        Harwood-Jones.

4           Q.        But you are simply guessing I  
5        take it, you don't know for a fact?

6           A.        Well, I remember that Miss  
7        Harwood-Jones was with the mother, so I would assume  
8        as I said that it is her patient and that's normally  
9        her role.

10          Q.        Let's just try and be clear. I  
11        don't want you to guess, if you don't know it would  
12        be more helpful to say that you don't know.

13          A.        No, I don't know for sure.

14          Q.        Thank you. If I could turn to  
15        the Miller child for a moment. You mentioned that,  
16        I think it was while you were attending to Cook,  
17        Phyllis Trayner came in with the 1 o'clock gentamicin  
18        for Miller?

19          A.        Right.

20          Q.        and your recollection is that  
21        she had with her both the syringe filled with the  
22        gentamicin and the vial itself?

23          A.        Right.

24          Q.        And it was her suggestion that  
25        she give the medication to the child at that time?

26          A.        As I say, I don't remember





A.9

1

2 whether I actually asked her to give the medication  
3 or whether in fact she did it on her own accord.

4

5 Q. You wouldn't think it particularly  
6 unusual that she did it on her own accord since she  
7 knew that you were busy with Cook?

8

A. Not at all.

9

10 Q. And with respect to her actually  
11 bringing the syringe and the vial to show you, would  
12 it be fair to say that she might well have done that  
13 simply to make sure that it registered with you what  
14 she was doing?

15

A. Certainly.

16

17 Q. Would it be also fair to say  
18 that in light of the concern about Pacsai and the  
19 suggestion that there had been some sort of medication  
20 error with Pacsai and an inquest with Pacsai that  
21 perhaps everyone was a little bit, if you will,  
22 uptight about the medications at the time?

23

24 A. Could be, I don't recall feeling  
25 that way.

26

27 Q. It is certainly possible?

28

29 A. It's a possibility.

30

31 Q. That's the way other people were  
32 feeling?

33

34 A. It's a possibility.

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A.10

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Q. Now, you testified concerning the lock-up of the digoxin. You mentioned that, I think that Mrs. Trayner asked you to do that?

A. Right.

Q. Do you recall, are you able to recall today the exact words to you?

A. I just remember that she asked me to lock up the digoxin.

Q. All right.

A. It was my feeling that she said the IV digoxin.

Q. All right. Is it possible that she may have simply said lock up the digoxin and that's as far as she went and that you interpreted it to mean the IV digoxin; is that possible?

A. It's possible.

Q. You or she might have come to the same conclusion that the oral elixir had been checked already and everything was okay with it.

A. Phyllis or myself?

Q. Yes, you may have both assumed the same thing.

A. Could have been.

-





B  
DP/cr

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2 Q. Turning to Baby Cook, Miss

3

Nelles, you testified that there was Inderal or  
4 Propranolol taped to the bed and I just want to  
be clear about your recollection of what it was that  
5 was taped to the bed. Again, if you are uncertain  
I think it would be most helpful to the Commission  
6 if you voiced that uncertainty today.

7

8 Did I understand that there were two  
9 syringes taped to the bed?

10

A. That is what was written in  
11 my notes that I prepared almost just a week after -  
12 sorry, a week and a half or so after I had recorded  
13 that there were two. Now, I was not sure. I cannot  
14 remember exactly but that would be the closest  
recollection as that was written shortly after.

15

Q. So the notes, when you say  
16 two to the Commissioner today and yesterday, you are  
17 basing that on what you wrote down two or three years  
18 ago?

19

A. Right.

20

Q. That was refreshing your  
memory, in effect?

21

A. Yes.

22

THE COMMISSIONER: I think it is more  
23 than that. I think it is past recollection recorded

24

25





1

2 as opposed to present recollection revised.

3 MR. STRATHY: That is right. I do not  
4 think those notes have actually been produced. I  
5 think we have had the benefit of the other notes  
6 but not of these.

7 THE COMMISSIONER: We did have the other  
8 notes. These have not been produced.

9 MR. STRATHY: I wonder if they may be  
10 produced. I wonder if the witness is prepared to  
11 waive the privilege.

12 MR. SOPINKA: I suggest that she read  
13 from the notes anything relating to that matter  
14 because there are matters in the notes that relate  
15 to Phase II and I am not taking the same position  
16 with respect to those. I do not think, for that  
17 reason, that they should be produced in the same  
18 way as the others. I think my friend's purpose will  
19 be adequately served if the witness reads from the  
notes anything that relates to the matter that he  
is questioning her about.

20 MR. PERCIVAL: Mr. Commissioner,  
21 certainly from the standpoint, when I get to it there  
22 is going to be a motion that they be produced because  
23 it seems to me, and I will have authority for you at  
24 that time, but my friend by producing the two notes

25





1

2 that have already been, it is my submission that  
3 having waived the privilege with relation to those,  
4 he has waived the privilege to all others. It seems  
5 to me it is the best evidence, contemporaneous with  
6 the event and refreshes her recollection. I have  
7 heard so far about eight or nine babies that she has  
8 no recollection of. I will make my motion when I  
am up there.

9 MR. STRATHY: I will leave it to Mr.  
10 Percival to do that. I would like to have two things  
11 done. One would be for the witness to look at her  
12 notes and indicate what it is that the notes record  
13 and, secondly, if there is anything else recorded in  
14 the notes of which she does not have an independent  
15 memory that she advise the Commissioner of that as  
well, with respect to Cook.

16 THE COMMISSIONER: That is putting a  
17 fairly heavy burden on the witness. I think we had  
18 better let Mr. Sopinka answer that question for you.  
19 Are you satisfied with that solution?

20 MS. KITELY: Mr. Commissioner, before  
21 Mr. Sopinka responds to your question this issue came  
22 up with one of the previous nursing witnesses and I  
23 think it was Mr. Hunt who took the position that if  
the witness looked at any part of the statement when

24

25





Nelles, cr.ex.  
(Strathy)

1

2 she was on the stand then the entire statement had  
3 to go in.

4 THE COMMISSIONER: He may have taken  
5 that position but it is not a position I take.

6 MR. SOPINKA: It is wrong in law.

7 THE COMMISSIONER: Yes.

8 MS. KITELY: As I recall, if my memory  
9 serves me correctly, it is my submission that is what  
10 occurred on that occasion. There cannot be one law  
11 for the previous nursing witness and a different one  
12 for this one.

13 THE COMMISSIONER: No, no. There comes  
14 a time when there has been sufficient reference to  
15 either a statement or something of that nature and if  
16 it is in the hands of some counsel then it should  
17 be in the hands of others. Those were statements that  
18 were made. The notes that they made themselves, if  
19 they made them themselves for the purposes of  
20 litigation, I don't know why they ever become  
21 admissible. They make those, unless someone somehow  
22 or other has a copy of them and cross-examines them  
23 on it and wants to show that there is something  
24 different in the notes.

25 MS. KITELY: My point, sir, is not  
26 the authorship of the document but the witness while









1

2 you any objection to Mr. Strathy looking at these  
3 notes?

4 MR. SOPINKA: I don't think he wants  
5 to.

6 THE COMMISSIONER: All right, if he  
7 doesn't want to --

8 MR. SOPINKA: What I said, Miss Nelles  
9 will read anything that relates to the matter that  
10 he is questioning her about at the moment. I will  
11 undertake if there is anything in them relating to  
12 Phase I that has not been covered by her in her  
13 very thorough examination by Mr. Lamek, then I will  
14 do it in re-examination.

15 THE COMMISSIONER: All right. Now,  
16 Mr. Strathy, if you are content with that, that is  
17 fine, that solves it. I do not think you - you can  
18 make another motion at another time when you are  
19 examining her, Mr. Tobias.

20 MR. TOBIAS: I will reserve my right  
21 to do that.

22 THE COMMISSIONER: I am now finding  
23 the problems are easier if I solve them one at a  
time. I am going to solve this one right now. If  
24 Mr. Strathy is willing to leave it at that, let us  
25 proceed.





1

2 MR. STRATHY: Thank you.

3 Q. Can you tell us what your notes  
4 tell you, Miss Nelles, about the syringes.

5 A. (reads from notes)

6 "When I arrived in 418 I did notice  
7 that there were two syringes of  
8 propranolol, one milligram per cc  
9 drawn up and taped along with the empty  
vials to the end of the bed."

10 Q. Do your notes say anything or  
11 do you have any recall of whether there were any  
12 labels on these syringes?

13 A. I believe they were labelled,  
yes.

14 Q. Is that from your notes or  
15 just from your recollection?

16 A. From my recollection.

17 Q. Do you recall what the labels  
18 said?

19 A. I believe they said that it  
20 was one milligram per cc of propranolol and was  
21 signed - it was perhaps signed by who had drawn it  
up.

22 Q. Do you have a recollection of  
23 who it was who signed it?

24

25





1

2 A. Not that one, no.

3

Q. Sorry?

4

A. Not those, no. I specifically remember that the syringe in the fridge that I used was signed by Sui Scott.

5

Q. Do you have any knowledge as to, let us start with personal knowledge from your observation as to who it was that did draw up those syringes and who it was had taped them to the bed?

6

A. I would have no way of knowing.

7

They were there when I arrived.

8

Q. Do you have any knowledge other than personal knowledge, Miss Nelles, as to who it was that did that?

9

A. No, I don't.

10

THE COMMISSIONER: I don't know quite what personal knowledge means. Does personal knowledge mean that you observed it or that it was something that somebody told you?

11

MR. STRATHY: I was trying to distinguish it from hearsay.

12

THE COMMISSIONER: Do you know from personal observation, and the answer to that is no?

13

THE WITNESS: Right.

14

THE COMMISSIONER: Secondly, did anyone

15

16





1

2 tell you who did it?

3 THE WITNESS: No.

4 THE COMMISSIONER: Then that answer  
5 was no and I was right.

6 MR. SOPINKA: And she has been  
7 thoroughly instructed in the laws of evidence.

8 THE COMMISSIONER: Good.

9 MR. STRATHY: Q. I have never quite  
10 understood about this Propranolol or Inderal being  
11 taped to the bed. As I understood it Propranolol  
12 is not an emergency type medication?

13 A. Maybe it would have been viewed  
14 as an emergency drug considering the condition of  
15 this child.

16 Q. When you went in to Cook, into  
17 the room, was it your understanding that the  
18 Propranolol was taped to the bed in case you needed  
19 it in a hurry. Was that the reason?

20 A. Not that I needed it in a hurry  
21 but the physician would need it in a hurry, yes.

22 Q. Was that something that had  
23 happened before in your experience, that medication  
24 had actually been drawn up and taped to a bed?

25 A. I can recall as I said before  
medications being drawn up and sitting by the bed,





1

2

not specifically taped to the bed but they were at  
the bedside, yes.

4

Q. To be ready in case of an --

5

A. Of an emergency, yes.

6

Q. Would it be fair to say it  
was not a particularly common thing for that to  
happen?

7

A. It is not common, no.

8

9

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C  
DM/cr

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Q. You testified that you, after  
Cook had been admitted, that you took Baby Cook to  
the echo lab?

3

A. That's right.

4

5

Q. Do you have a recollection of  
how it was that you took Cook, in other words did  
you carry Cook in your arms, did you wheel him in  
a bed, how did you pick the baby up?

6

A. I can't remember.

7

Q. I beg your pardon?

8

A. I can't remember.

9

Q. How old was Baby Cook?

10

11

A. He was about three and a half  
months old.

12

13

Q. With a baby that age would it  
be quite possible that you would in fact carry the  
child?

14

15

A. Yes, it would be.

16

17

Q. If I suggested to you it is  
more likely than not that you did carry the child  
to the echo lab, would you be prepared to agree  
with that?

18

19

A. I really can't remember whether  
I took him in his bed, or whether I carried him.

20

21

Q. Okay, thank you. Now then you

22

23

24

25





1

2 mentioned that with respect to Cook, Phyllis  
3 Trayner gave the child the second feeding.

4 A. Are we talking Saturday night  
5 now?

6 Q. Yes.

7 A. Yes.

8 Q. And while that was taking place  
9 you went into the nursing station, you went for a  
break into the nursing station?

10 A. Yes, I did.

11 Q. And that was right next to the  
12 baby's room, wasn't it?

13 A. Right.

14 Q. And was that simply for your  
break?

15 A. Yes, it was.

16 Q. What was the condition of Baby  
17 Cook when you left to take your break, do you recall,  
18 was he awake or was he asleep?

19 A. Mrs. Trayner was feeding him.

20 Q. So the feeding had started?

21 A. Right.

22 Q. How would you describe Baby  
23 Cook at that time, was he fretful, difficult to  
24 feed?

25





1

3 2 A. I do not know because I was  
3 not feeding him.

4 Q. No, but from what you saw as  
5 to what Phyllis was doing when you left her with the  
5 child, do you recall --

6 A. She was holding him and feeding  
7 him and he was drinking.

8 Q. He was feeding at the time was  
9 he?

10 A. Yes.

11 Q. How long was it that you were  
12 in the nursing station for your break, in total?

13 A. About 45 minutes.

14 Q. During that time do you recall  
15 going back to look in on Cook from time to time?

16 A. I went to the doorway, yes.

17 Q. The doorway of the Cook room?

18 A. Yes.

19 Q. And why was that?

20 A. Because I wanted to see how  
21 he was.

22 Q. And do you recall when that  
23 was in your break, was it midway through, was it  
24 more than once?

25 A. I believe it was just shortly





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2 after I had left the room.

3 Q. And do you recall going in  
4 more than once during your break?

5 A. No, I don't remember going  
6 more than once.

7 Q. I take it you just don't have  
8 a memory of it, but it is possible you may have gone  
9 in more than once to check?

10 A. I don't remember going more  
11 than once, no.

12 Q. Do you recall when you did go  
13 in that the child was fretful and restless and  
14 perhaps crying?

15 THE COMMISSIONER: I am sorry?

16 Q. I am sorry, when you did go to  
17 the door, do you recall that the child was fretful,  
18 restless and possibly crying?

19 A. I believe that is why I went  
20 to the room, because I think I heard him crying, and  
21 I went and stuck my head in the door and asked if he  
22 was all right.

23 Q. And what did Phyllis say to  
24 you?

25 A. She said he was fine.

Q. And what was going on when you





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5                   2 did go to the door, where was Phyllis?

3                   A.           I don't remember; she was at  
4                   the bedside.

5                   Q.           Would she be likely, when you  
6                   are feeding an infant that age, I would assume you  
7                   would sit in an armchair or something, would you  
not, with the bottle?

8                   A.           Right.

9                   Q.           And do you recall whether -  
10                  when you say in the bedside or at the bedside, was  
11                  she sitting in a chair with Cook in her arms?

12                  A.           I don't remember whether she  
13                  was sitting or whether she was standing.

14                  Q.           But in any event she had the  
15                  child in her arms and the bottle in her arms I suppose?

16                  A.           I am not so sure, because as  
17                  I say he was crying, so I don't remember whether she  
18                  had him in the crib or whether she had him in her  
19                  arms.

20                  Q.           Do you know whether the feeding  
21                  had finished at the time you went in?

22                  A.           I don't know.

23                  MR. STRATHY: Thank you.

24                  THE COMMISSIONER: Thank you, Mr.  
25                  Strathy. Mr. Sopinka. I take it in the ordinary





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2 course I would be calling on Mr. Hunt and you have  
3 some objection to that.

4 MR. SOPINKA: Yes.

5 THE COMMISSIONER: How long will you  
6 be? I am wondering just merely about your client,  
7 that's all.

8 MR. SOPINKA: Well perhaps she can be  
9 asked whether she would rather stay in the witness  
10 box or come back down here. Perhaps she could sit  
11 beside me and give me instructions, that would be  
better.

12 THE COMMISSIONER: Whatever you like.

13 MR. SOPINKA: Would you like to sit  
here, Miss Nelles.

14 THE COMMISSIONER: If this gets too  
15 long and boring you can leave. Anybody else who  
16 feels the same way can do exactly the same thing.

17 MR. SOPINKA: I know the press will  
18 be deprived of a favourite picture of theirs for  
19 some 20 minutes. I think Miss Nelles will be more  
20 comfortable sitting here.

21 ---Witness excused from witness box.

22 MR. SOPINKA: Mr. Commissioner, it is  
23 my submission that you should rule either that the  
24 Attorney General and the Metropolitan Police have no  
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2 status to ask questions, or that they should identify  
3 their interest in this Inquiry and that their  
4 questions should be limited accordingly. They have  
5 never identified what interest it is that they have  
6 in this Inquiry, and it is not, as suggested by  
7 some newspapers, that we are seeking to stop Miss  
8 Nelles from being cross-examined. She has been very  
9 effectively examined by Mr. Lamek and all matters  
have been gone into.

10 It is my submission that based on past  
11 performance you will find that Mr. Hunt and Mr.  
12 Percival will be cross-examining as an extension of  
13 either the police investigation or the prosecution.  
14 It is not that we don't want Miss Nelles cross-  
15 examined, it is we don't want her prosecuted, that  
16 has already happened. So if I fail in my motion  
17 that they have no interest, then I submit that if  
18 that is the direction of their questioning it ought  
19 not to be permitted, and of course that can be dealt  
with on a question by question basis.

20 I put my submission this way. I  
21 appreciate that when they were given status there  
22 were no submissions made. I don't know that they  
23 ever identified their interest, they were simply  
24 given status.

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2 THE COMMISSIONER: They obviously have  
3 status, because one of the things I have to do is to  
4 investigate their conduct.

5 MR. SOPINKA: That is right.

6 THE COMMISSIONER: And the fairest --

7 MR. SOPINKA: Clearly they would be  
given status in Phase II because their conduct was --

8 THE COMMISSIONER: Remember we just  
9 divided these phases up for convenience.

10 MR. SOPINKA: That's correct.

11 THE COMMISSIONER: There was never any  
12 question at all raised about that.

13 MR. SOPINKA: Exactly, so I take some  
14 comfort in that because they were given status because  
15 of their obvious interest in the other part of the  
16 Order-in-Council, but that did not mean that they  
17 had status for all purposes and were in the same  
position as other affected parties in Phase I.

18 Now Phase I deals with how and by what  
19 means the children came to their death, that is the  
20 language from the Coroner's Act. The debate that  
21 we had on the question that was submitted to the  
22 Court of Appeal, in your Reasons you did not take the  
23 position that those words were different than those  
in the Coroner's Act, or that Phase I differed.

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2 What you did say, you referred to the MacKenzie case  
3 and said, well, under the Coroner's Act the Coroner's  
4 Jury is not allowed to express a conclusion of law.  
5 In the MacKenzie case for instance they said a  
6 physician had done his job in a careless fashion,  
7 and that is a conclusion of law and obviously that  
8 case is distinguishable. The point was that you  
9 did not hold, and I submit this was correct, that  
10 those words were any different than those in the  
11 Coroner's Act. So Phase I really is the same kind  
12 of inquiry as a Coroner would perform.

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Now, could anyone suggest in a  
Coroner's Inquest that the Police would be given  
status unless a policeman had been involved in the  
death in some way?

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THE COMMISSIONER: But we have to  
accept that there are two phases to this. The  
second phase is going to be affected by the first  
phase, and that is why we had the first phase first.  
If, for instance, I were to decide that all of these  
children died of their clinical condition, this would  
make the position of the police and of the Crown  
Attorneys much more difficult. One of the things,  
I would think, but now I am not going to tell them  
how to conduct their case, but I certainly think





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2 that one of the things they want to establish is  
3 that these children did die, or some of them at  
4 any rate of digoxin toxicity. If they do that  
5 then they are at least over that hurdle as to the  
6 prosecution. Now, if they don't have that, they  
7 start off with that difficulty, and if I were to make  
8 a finding that there was no evidence of these  
9 children dying of toxicity of any kind, then why did  
10 they proceed to prosecute anyone, much less your  
11 client. Now surely they have an interest in  
determining that question.

12 MR. SOPINKA: Well there may be some  
13 difficulty with that. I have always viewed, in  
14 Phase II, and we haven't got into it and we haven't  
15 debated it, but Phase II will be concerned not with  
16 what in fact is the situation but what information  
the police had and how they acted on it.

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THE COMMISSIONER: That's right,  
that's right.

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MR. SOPINKA: So that if for  
instance you made some finding here that is  
completely different than the evidence they had,  
it is immaterial.

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THE COMMISSIONER: But if I were  
to make a finding that there really is now no  
ground, and there was not then any ground for  
suspecting any kind of foul play then surely they  
should not have proceeded with the prosecution.

MR. SOPINKA: But whatever you  
find in this Phase, if in Phase II they say, well,  
we had this evidence and where it is fine you have  
had a long Royal Inquiry and you have all sorts  
of things --

THE COMMISSIONER: I don't see how  
we could distinguish. This is the problem we are  
faced with. Remember that really the police are  
in every bit as difficult a position or perhaps in  
many ways a more difficult position in this Inquiry  
than your client is because they are - one of the  
problems I am to determine is did they or did they  
not behave properly.

MR. SOPINKA: They are certainly





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in more difficulty in Phase II.

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THE COMMISSIONER: Well, you won't get anything out of me that way.

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MR. SOPINKA: Well, I think with respect that you have to distinguish your decision or report on this Phase that will be based on the evidence that is before you.

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THE COMMISSIONER: Absolutely.

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MR. SOPINKA: Whether they act properly in Phase II is dependent entirely on the evidence that they have. So that I submit with respect that you are not connected --

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THE COMMISSIONER: I am not entirely prepared to accept that. If it develops that there was some foul play, whether there was some improper conduct and if it comes later I don't see that the police can be abused that much for making an intelligent guess, I don't know. Anyway, I'm not expressing an opinion on it.

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But at this point I want you to understand it does seem to me that it is of importance to the police to establish that there was something strange going on at that Hospital at that time and if they fail to establish that their position in Phase II is infinitely worse.

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MR. SOPINKA: Well, if you hold that that is their sole interest in the Inquiry that of course would limit to some extent the nature of the questions that they would be allowed to ask and that's what I am saying. I submit that the police have to identify their interest here because they are spending a vast amount of public money. Under the Police Act their function is to investigate crime. They are here I submit, and the direction of the questions will indicate that (a) to continue their prosecution or investigation and, secondly, as an examination for discovery in connection with the Malicious Prosecution Action. If that is what they are doing then they shouldn't be allowed to do it.

THE COMMISSIONER: No, no, if you don't mind I am not going to allow either you or them that purpose to examine anybody for discovery for that purpose. The difficulty is that both of you will have a very easy time persuading them that it is not for the purposes of examination for discovery and even if it is because it has some relevance to one or other of the two phases. However, go ahead.

MR. SOPINKA: Well, only in this





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Phase at the moment.

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THE COMMISSIONER: Yes.

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MR. SOPINKA: Well then, that's my submission with respect to the police. I submit that they would not have any status at a coroner's inquest and the language of the Order in Council relating to this Phase is identical to that of a coroner's inquest, then they really have no status, but if they do have any status they should identify it and their questions should be limited accordingly.

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Now, with respect to the Attorney General, while it is true that at a coroner's inquest the Crown Attorney leads the evidence but that's because somebody has to do it. Here we have Commission Counsel who has performed that role. The Crown Attorney at a coroner's inquest is not advancing the interests of the individual Crown Attorneys or of the Attorney General as a minister. The Crown Attorney at a coroner's inquest is representing the interest of the public and here that is being done by Commission Counsel.

So, again, I submit that the Attorney General has no status but if he has a status, that should be identified and the questions limited





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accordingly.

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Thank you, sir.

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THE COMMISSIONER: I wonder, before we call on you, Mr. Hunt, is there anyone supporting the position of - yes, Miss Kitely?

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MS. KITELY: Without adding to my friend's comments we support the position taken by Mr. Sopinka.

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THE COMMISSIONER: Yes. Anyone else? Mr. Strathy?

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MR. STRATHY: Yes, I am precisely the same, Mr. Commissioner.

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THE COMMISSIONER: Do you have any arguments you wish to put to us?

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MR. STRATHY: Well, only this. I don't have the cases in front of me but if this Commission were to be used by the police or by the Crown Attorneys to in effect investigate a crime or crimes rather than to deal with the Phase II issues --

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THE COMMISSIONER: Well, surely that can be dealt with in any given question. If the question is legitimate -- First of all, it has to be in this Phase, it has to be in the cause of death. But the interest, we are now concerned not about legitimacy of the question but we are concerned





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about the interest of the Crown Attorney and their interests as I say stems from the fact that they are going to have to defend themselves in Phase II, and having to defend themselves in Phase II with the strike - the baseball season having started now, I can say the strike or two strikes against them from the fact that the Commissioner has made up his mind that there was nothing at all strange or unusual about the deaths of these children would be almost impossible to overcome.

MR. STRATHY: Well, I think, Mr. Commissioner, what Mr. Sopinka is saying is that it is too much for us to deal with it on a question by question basis. We are simply asking that the interest of the police be defined at the outset so that we have some context in which we can look at the questions because it is quite possible that on a question by question basis what will in effect be done is an investigation of what are believed or alleged to be criminal offences.

In my submission on the authorities, once you start using a provincial Commission to do that, to investigate a specific crime or crimes, you are trenching on the federal domain and it is separate and distinct.





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THE COMMISSIONER: I've got to be extremely careful what I say because the Court of Appeal is considering this problem at the moment, but that was not the conclusion I reached.

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MR. STRATHY: Well, it is a separate issue with respect, it goes well beyond the naming of names question.

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THE COMMISSIONER: Yes, all right. Anyone else supporting this position? Yes, Mr. Knazan?

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MR. KNAZAN: I support the position, Mr. Commissioner, in reference to Mr. Strathy's point. I would suggest a resolution which is if the police and the Attorney General say that if new evidence were to be found then prosecution would follow and that they were prepared to state that no prosecution would follow against whatever witness is on the stand, that might avoid the problem.

THE COMMISSIONER: You want to stay their hand on all prosecution forever; is that the idea?

MR. KNAZAN: No, just to make sure that their purpose in cross-examining in Phase I is for the purpose you stated.

THE COMMISSIONER: Phase II. But





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3 they can't say now that they will not prosecute. Do  
4 you really seriously expect the Attorney General to  
5 say I am never going to prosecute anybody with  
respect to this matter?

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7 MR. KNAZAN: No, no, you may find  
evidence against someone who isn't testifying. I'm  
8 referring to a problem --

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10 THE COMMISSIONER: But anybody who  
testifies would be relieved forever from prosecution  
11 by the simple act of testifying. I'm losing you  
somewhere.

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13 MR. KNAZAN: Well, as Mr. Strathy  
14 says, it is a completely separate problem from the  
naming of names and that is whether a provincially  
15 authorized inquiry could be used to obtain  
evidence and circumvent the procedure.

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18 So, if the police and the Attorney  
19 General are in a position to say there is no  
prosecution pending or contemplated against this  
20 person, that would alleviate any concerns about  
21 perhaps cross-examining in Phase I.

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23 THE COMMISSIONER: Yes, all right,  
thank you. Anyone else supporting this position?  
24 Mr. Lamek, do you want to be heard on this issue

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or not or do you want to be heard afterwards?

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MR. LAMEK: Perhaps I could wait until after those who are opposing it.

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THE COMMISSIONER: Yes, all right.

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Well now, Mr. Hunt and Mr. Percival, both of you, I would just like to tell you I hope you are duly flattered by this effort to keep you out but I am not, in all the defence I have given you, it is not to be taken that I necessarily agree that you have been as effective as they seem to have indicated. However, go ahead.

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MR. HUNT: I have been waiting for this flattery for some time actually but inasmuch as it has been raised now, let me say that first of all my position with respect to the witnesses that have testified has been to cross-examine them closely on the issue of how and by what means the children died which as we all know is Term 3 in the Terms of Reference. It is not an extension of any prosecution as far as I'm concerned or my clients are concerned or certainly any police investigation. It is strictly, in my submission, within the terms of Term 3 and subject to your ruling would intend to do that, to cross-examine any witness on Phase I with a view to determining if there is anything they





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2 can add to that question.

3 Now, you have in argument with my  
4 friends indicated what my submission would be and  
5 that is that Phase II and Phase I are really, as far  
6 as the clients that I represent are concerned,  
7 inseparable. Mr. McGee, Mr. Wiley, some of the  
8 coroners were involved to a greater or lesser  
9 extent during the investigation and prosecution of  
10 Miss Nelles. As a result of that, I suppose one  
11 could say they have information and experience which  
12 may help shed some light on the matters that you are  
13 asked to decide in Phase I how and by what means,  
14 but that aside to say to them go away and come back  
15 at the start of Phase II, as you have aptly put it,  
16 it could put them in the position of starting out  
17 to defend their own action with two strikes against  
18 them without having any input whatsoever in Phase I.  
19 That's what, in my submission, I am here for.

20 Now, in addition, one thing my friends  
21 have overlooked is that I represent a number of  
22 different interests here. There is the Attorney  
23 General in his role as the chief law officer of the  
24 Crown who has an interest in all Royal Commissions  
25 called by him, there is the Attorney General in his  
individual capacity as someone who may or may not have





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3 been involved in the investigation, prosecution of  
4 Susan Nelles, there is Mr. Wiley and Mr. McGee who  
5 were involved and as individuals may stand in  
jeopardy of findings that you make.

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8 So, it is not quite so easy to say,  
9 well, send him away or restrict him because he  
10 happens to work for the Attorney General. That may  
11 well be but I represent a number of different  
12 interests and some of those interests in my submission  
13 dictate that they be represented here in order to  
14 have input into the Inquiry into Phase I.

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26 My friend Mr. Knazan suggests that  
27 that is only appropriate if it was indicated there  
28 would be no prosecution of anyone. We are all aware  
29 of what the duties of the Attorney General as the  
30 chief law officer of the Crown are. If he were  
31 to indicate that there would be no further prosecu-  
32 tion of anyone, regardless of what the evidence was  
33 or what the source was, I think he would be in the  
34 position of being criticized for having made an  
35 absolutely irresponsible decision to say that at a  
36 point in time before certainly the investigation is  
37 complete, before this Royal Commission is complete.

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42 There may be information coming from  
43 any one of a number of sources that would compel





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3 the laying of a charge in the public interest. I  
4 am somewhat puzzled by my friend Mr. Sopinka raising  
5 the issue now at the 11th hour just as I'm about  
6 to get up and cross-examine his client and I am  
7 puzzled because less than a month ago he was giving  
8 an interview to the press to CBL here in Toronto,  
this was on March 5th, a show called "As It Happens" --

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10 MR. SOPINKA: You can't rely on  
11 the press.

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13 MR. HUNT: And at that time he was  
14 put the question by the interviewer whether there  
15 was a problem in his view as there is with Mr. Alan  
16 Borovoy about police lawyers participating at all  
17 because he, that is Borovoy, presumes they have a  
18 vested interest. Mr. Sopinka at that time was quite  
19 candid with the public in his response, he said:

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21 "Well, I'm not, I didn't object to  
22 them being there because as far as  
23 I was concerned anybody that can shed  
24 light on the matter was entitled to  
25 be there and I wasn't going to be too  
fussy as to who participated."

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27 But he does concede looking at it  
28 objectively, Mr. Borovoy has a point and I suspect  
29 that now that the crunch has come with his client

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he sees Mr. Borovoy's point a little clearer.

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So, it is quite clear that this is something that has recently arisen. It is not a problem that is publicly received by anybody for any period of time and in my submission the nature of the Inquiry that you are conducting really dictates that certain people be represented throughout and providing the questioning that is being done by the representatives is not offensive in the sense that it is unfair or irrelevant, that it is really the duty of those representatives to ask questions and at this point those questions must go to how and why the babies died.

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2 THE COMMISSIONER: Yes, Mr. Percival.

3 MR. PERCIVAL: Mr. Commissioner, from  
4 the standpoint of the Metropolitan Toronto Police  
5 Force you of course were required some eight months  
6 ago and 125 sitting days to consider the rights of  
7 persons interested and pursuant to Section 5.- (1)  
8 of the Public Inquiries Act you have accorded to  
9 the Metropolitan Toronto Police Force, you seemed  
10 satisfied at that point that they had a substantial  
11 and direct interest in the subject matter of the  
12 inquiry and as the section went on to say, " ... an  
13 opportunity during the inquiry to give evidence and  
14 to call and examine or to cross-examine witnesses  
15 personally or by his counsel on evidence relevant  
16 to his interest."

17 Mr. Commissioner, quite apart from  
18 125 commission days that we have now been involved  
19 in, I have been here a substantial length of time.  
20 I have cross-examined rarely and shortly on behalf  
21 of the Metropolitan Toronto Police Force. The  
22 record will show that. The record will also show,  
23 and I don't know whether Mr. Sopinka has carefully  
24 examined it, but on my calculation he has been here  
25 less than 15 days of those 125 days. I would like  
to end up thinking that in the circumstances that if





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2 either he or his junior felt we were being unfair,  
3 irrelevant or whatever, the objection would have come  
4 some time before the 125th day before you, Mr.  
5 Commissioner.

6 We are here because we asked for status  
7 at the beginning. You clearly and carefully pointed  
8 out that Phase 2 is very much affected by the  
9 evidence which is entered and accepted by you in  
10 Phase 1 and clearly the police have a necessary and  
11 important role in assisting this commission in  
12 determining how and by what means these 36 baby  
13 deaths occurred in the Hospital for Sick Children.  
14 This is no extension of any prosecution. I think  
15 that if one carefully considered the cross-examination  
16 performed by either Mr. Hunt or myself in the course  
17 of these past few days, at no time has there been un-  
18 fairness, at no time has there been anything other  
19 than a careful examination of the facts.

20 You, Mr. Commissioner, I don't believe  
21 on more than one occasion have kept us from an area  
22 that you felt was improper in all of the circumstances.  
23 I don't know why Mr. Sopinka feels at this particular  
24 point, after 125 days, that all of a sudden that is  
25 going to change and that you, sir, will then change  
your role as the commissioner and the role that you





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must find yourself as being a fair administrator of this commission in the sense of making sure that the witnesses give their evidence properly, fairly and are cross-examined properly and fairly.

I am surprised that my friend brings up the examination for discovery and the malicious prosecution action that he has instituted on behalf of Miss Nelles. Because he has done so, I must address it. Mr. Sopinka in May and June of 1983 wanted to examine the two police officers for discovery in the civil action. There is a letter in his file sent to him by me in June of 1983 and I agreed to produce the officers for discovery by him but only on the understanding that Susan Nelles also submit to examination for discovery before either Susan Nelles or the officers gave evidence in this commission. I offered him available dates in July, August and September. I never heard one further sound about the examination for discovery until this moment in time.

I say to raise that as an objection to our cross-examination, to use that as an extension of - or to some way further our objection -- on our position in a civil action is totally unsupported by the history of the correspondence between his

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2 office and my own.

3 Those are my submissions.

4 THE COMMISSIONER: Thank you. Before  
5 I call on Mr. Lamek, is anyone else in support of  
6 the position of the Attorney-General?

7 MR. TOBIAS: On behalf of my clients,  
8 Mr. Commissioner, we are supporting this position  
9 enumerated this morning by Mr. Hunt and Mr. Percival.

10 I would like to make two short comments  
11 regarding the observations that you made. It is  
12 obvious that the proceedings here should not be  
13 allowed to be utilized as an examination for discovery  
14 nor should they be allowed to be utilized as an  
15 extension of the police investigation. However,  
16 isn't the problem really that the questions are  
17 extremely mixed and you cannot separate them?

18 There is an element of discovery and  
19 investigation in any legitimate Phase 1 question.  
20 I do not think there is any doubt about that.  
21 Equally, there is an element of legitimate Phase 1  
22 questioning in any questions which relate to  
23 investigation and discovery. The fact is whether it  
24 is a discovery in a civil action, an extension of  
25 the police investigation or concerns regarding  
Phase 1 in the terms of reference, any question that





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2 that is relevant to cause of death is allowable.

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4 I submit that it is almost impossible to separate  
5 them into air-tight compartments and that is  
6 precisely what you are being asked to do.

7 The other thing that no one has really  
8 commented on and that is that I quarrel in some  
9 respect with Mr. Sopinka's statement that Phase 1  
10 is really just a coroner's inquest. We have urged  
11 on the Court of Appeal, I think it is clear from the  
12 statements made by the Attorney-General to the  
13 legislature that it was contemplated by cabinet in  
14 drafting the Order-in-Council that this commission  
15 of inquiry has somewhat of a wider scope than  
16 a coroner's inquest would have. In fact, the govern-  
17 ment obviously considered the options available to  
18 it and looked at the tool of a coroner's inquest and  
19 rejected it because of the procedural limitations  
20 that they recognized. So I do not think it is fair  
21 to say that Phase 1 is only a proceeding which is  
22 completely analogous to a coroner's inquest.

23 Clearly I support Mr. Percival's  
24 point that what the interests of both the Crown and  
25 the police in Phase 1 is and what the interests of  
all the other parties is is how did the babies die.  
As you pointed out before, if they died naturally then





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2 that has some very serious consequences regarding  
3 their behavior.

4 THE COMMISSIONER: Thank you. Anyone  
5 else?

6 Mr. Manning?

7 MR. MANNING: I support Mr. Hunt's  
8 and Mr. Percival's submissions to you, Mr. Commissioner.  
9 I won't reiterate them. I adopt them and support  
10 them and would add that up to the present time that it  
11 has been our perception on behalf of our clients  
12 that you have given a wider latitude - I am not  
13 being critical at all, I merely observe - you have  
14 given a wider latitude on cross-examination on behalf  
15 of some of the other interested persons and parties  
16 in these proceedings as opposed to the latitude given  
17 to the parents. Again, I am not quarreling with that.  
18 We accepted that from the outset.

19 I am fearful that if they are not  
20 allowed to continue their cross-examination that we  
21 might get into discussion at a later time with  
22 respect to opening up the areas upon which I could  
23 cross-examine on behalf of my client because I don't  
24 agree that everyone's interests are the same and  
25 therefore everyone looks for different things in  
cross-examination.





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I found it very interesting that Mr. Sopinka who in talking about the examination by Mr. Lamek used the word "examination" rather than "cross-examination." For whatever reason Mr. Lamek had, he did not go into certain areas that I would like to see gone into, and I am sure will be gone into by Mr. Hunt and Mr. Percival with respect to certain areas where Miss Nelles said she could not remember certain matters. So for that reason it is my submission that you should allow them to continue to play the role that they have played throughout this entire commission.

THE COMMISSIONER: All right, thank you.

Mr. Shinehoft.

MR. SHINEHOFT: I, Mr. Commissioner,

support Mr. Hunt and Mr. Percival in their position and certainly adopt that. Mr. Sopinka has raised a question about this being an examination for discovery on a malicious prosecution matter.

The hospital could make the same argument as far as parents' counsel because there have been actions instituted against the hospital, but they have not done this. I think the hospital has recognized that the parents have to be represented and they have somewhat of a different interest than





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2 the other counsel who are present.

3 THE COMMISSIONER: Thank you. Anyone  
4 else? Mr. Lamek.

5 MR. LAMEK: Briefly if I may, Mr.  
6 Commissioner, I find at the outset I am not entirely  
7 clear whether Mr. Sopinka is asking you to review the  
8 grant of standing to the Police and the Attorney-  
9 General with respect to Phase 1 or whether he is  
10 merely asking you to restrict their right to cross-  
11 examine his client.

12 MR. SOPINKA: To assist my friend,  
13 I am taking both positions but in the alternative.

14 THE COMMISSIONER: That is what I under-  
15 stood, too.

16 MR. LAMEK: In either event, of course,  
17 the position is governed by Section 5.-(1) of the  
18 Act and it is worth, respectfully, looking at  
19 it again. It provides:

20 "The Commission shall accord to any  
21 person who satisfies it that he has  
22 a substantial and direct interest  
23 in the subject-matter of this inquiry  
24 an opportunity during the inquiry to  
25 give evidence and to call and examine or  
to cross-examine witnesses personally





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or by his counsel on evidence relevant  
to his interest ."

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Some ten months ago, sir, you decided that Mr. Hunt's clients and Mr. Percival's clients had that direct and substantial interest in the subject matter of this inquiry to justify that they be given what we call standing under Section 5.-(1). I confess, sir, I do draw a distinction between standing for the purposes of the two phases.

Respectfully, I adopt the position which you have formulated this morning that even with respect to Phase 1 the interests of the clients of Mr. Hunt and Mr. Percival are indeed direct and substantial. They patently have a direct and substantial interest in Phase 2 but although for the purposes of hopefully ease of exposition we have separated the two phases, there is indeed an impact on Phase 2 from Phase 1. The large question in Phase 2 is with respect not as my friend Mr. Sopinka defines it. He says the question there is not what in fact happened but what did the police know at the time they took certain actions, and what did the Crown know at the time it took certain actions.

In my submission the large question may well be not merely what the police and the Crown





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2 Attorney knew but what they should have known.  
3 what by the exercise of proper diligence they should  
4 have had available to them by way of information;  
5 was the investigation adequate; did the Crown  
6 Attorneys have all the information they should  
7 have had, and I have no doubt that Mr. Sopinka will  
8 be pursuing that line when we come to Phase 2.

9 If after this part of the investigation  
10 you should have formed the view, sir, that there  
11 was no proper evidence of mischief with respect  
12 to any of these children I think it is idle to  
13 suggest that the fight of the police and of the  
14 Crown Attorney to justify their actions would be  
15 more steeply uphill than had you found that at  
16 least there was cogent evidence of wrongdoing.  
17 Therefore I say, sir, with respect, there is no  
18 reason to review or rethink the grant of standing  
19 which you made to Mr. Hunt's and Mr. Percival's  
20 clients back in May of 1983.

21 The question then becomes, the evidence  
22 of Miss Nelles, is it relevant to the interest  
23 of those clients because if it is then as I  
24 read Section 5.-(1) they are entitled to cross-  
25 examine without restriction as it affects their  
interest, and if the interest of the clients of





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Mr. Hunt and Mr. Percival in Phase I be as I have suggested it, sir, and as I understand you to see it, then it would seem to me that any evidence from people who were directly involved in the events on the ward which are now being enquired into and which may go to establishing cause of death are indeed matters which affect the interest of Mr. Hunt's clients and Mr. Percival's clients and I see no basis for restricting their cross-examination of the evidence as it goes to those interests.

Second, sir, I'm not prepared either to be so confident as my friend Mr. Sopinka that Mr. Hunt or Mr. Percival may attempt to pursue in cross-examination of Susan Nelles matters which lie properly outside the clients' proper interests. I have no doubt that Mr. Sopinka will not be shy to make at least the objections that he thinks proper if such question should arise. You have ruled in the past, sir, on the propriety of questions raised by Mr. Hunt, Mr. Percival and others and I have no doubt you will continue to do so if the propriety of questions is challenged. So I suggest there is no reason in principle to accede to the motion of Mr. Sopinka but indeed on the basis of prediction which may turn out to be unfounded





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3 I suggest there is no reason to deal with the matter  
4 now. It can be dealt with as individual questions  
and objections may be raised.

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THE COMMISSIONER: Thank you.

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Mr. Sopinka?

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MR. SOPINKA: I will be very brief.

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9 I submit you have not been given any reason to find  
10 that the Police or the Attorney General have a  
substantial and direct interest in the subject  
matter of this Inquiry.

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Now Mr. Lamek says, well, in Phase II it will be relevant to determine what information they should have had. If that is all they are going to cross-examine on, to show that they should have had other information that is fine, I am quite prepared for them to ask Miss Nelles any questions as to what other information should they have had, but I submit that is not going to be the direction of their questioning.

Now really nobody has made a new point, other than the point you have made, and I have addressed my remarks to that. Your point is what happens here is relevant to Phase II. I disagree with that but I have made my submissions on that and I am not going to elaborate on it. What my friends have done is, Mr. Hunt is so desperate that he has to rely on radio interviews to support his argument. I can tell you that I could quote some beauties from his client as well, the chief law enforcement officer, that might be embarrassing but I am not going to engage in that kind of display.

With respect to Mr. Percival, he has a very short memory. The very first time he asked one of the questions from the preliminary hearing which reflected adversely on Susan Nelles I was here,





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2 and you will recall that I said he was engaging in  
3 a sniping prosecution, and he has done that ever since.  
4 I can't come back every time he does it and object,  
5 because you ruled against me on that one and I don't  
6 usually repeat my submission, but that is what he  
7 has been doing all along, and I submit that is  
8 exactly what he is going to be doing now and I am  
going to object to it.

9                   With respect to the Examination for  
10 Discovery, he forgets the fact that the discovery  
11 could not go ahead because the High Court lopped off  
12 the Attorney General as a party, and that is being  
13 appealed, and we can't have a discovery with one party  
14 present but later on the Attorney General may be  
15 added, so that is why the discovery did not proceed,  
16 and my friend did not read far enough in his  
correspondence.

17                   THE COMMISSIONER: Yes. Thank you.  
18 Most of the time I have the luxury of reserving and  
19 writing something that is moderately literate. I  
20 haven't got that luxury today because we are to  
proceed immediately with the cross-examination.

21                   This motion brought by Mr. Sopinka  
22 will be dismissed. I have stated in the course of  
23 argument that I believe that both the Attorney General

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2 and the Police have a legitimate interest, and that  
3 interest being an interest which will be demonstrated  
4 in Phase II, but it is an interest in the result of  
5 Phase I.

6 The second reason for dismissing this  
7 application is that it comes much too late. If any  
8 such application as this had been made at the  
9 beginning, it could have been dealt with then without  
10 prejudice to the parties. One of the major items of  
11 prejudice of course has been the division of Phase I  
12 and Phase II and I have no idea what position the  
13 two parties affected would have taken on the proposal  
14 of the division, they might well then have objected  
15 to it and that would have to have been dealt with. It  
16 is now impossible, we are within I hope a few weeks  
17 of entering into Phase II and we cannot change the  
18 rules of the game at this stage.

19 I do add, however, that I accept what  
20 Mr. Lamek has said, and of course he is stating only  
21 what the law is. That is, I am required to accord to  
22 a person who has a substantial and direct interest  
23 in the subject matter, the right to give evidence and  
24 to call and examine, or to cross-examine witnesses  
25 personally, or by their counsel, on evidence relevant  
to their interest.





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Now as Mr. Tobias has pointed out, it  
is very, very difficult sometimes to tell, to make  
the distinction between Phase I and Phase II but I  
have done it, and rightfully or wrongly from time to  
time and I continue to do it in this phase. If any  
of the questions that are raised seem to be relevant  
only to Phase II then I will be happy to receive  
argument. If some of the questions raised seem to  
have no application to either Phase I or Phase II I  
will certainly receive that argument at the time. I  
don't encourage a multiplicity of objections but they  
are certainly open to counsel. So now it is time for  
a break and after that, after all that fuss, Mr. Hunt,  
I hope your cross-examination is worth it. We will  
take 20 minutes.

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16

--- Short recess

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--- On resuming:

18 SUSAN NELLES, Resumed

19

THE COMMISSIONER: Yes, Mr. Strathy?

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MR. STRATHY: Mr. Commissioner, during  
all that argument I had an opportunity to review my  
notes and I remembered a question, and with your leave  
may I put it to the witness, please?

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23 THE COMMISSIONER: Certainly.

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MR. STRATHY: Q. Miss Nelles, I am just referring to your notes which have now been made Exhibit 392, they are your notes pertaining to Allana Miller. If you could turn to the bottom of page 108, you are referring to the admission of Cook I believe and you say:

"The ECG was done in the room but I went with Dr. Schaffer ...".

And over on page 109:

" ... and Dr. Souliotti to Cardiology (down the hall in another section past 4B) to do the echo. The baby throughout these tests was fairly irritable .."

this is Cook:

" ... and very cyanotic, or blue. At approximately 030 I returned to 418 where I put Justin in his crib in 100 % 02 and settled him."

Now, looking at those notes, is it a fair inference from those notes that because you say that on returning to 418 that you put Justin in his crib, is it a fair inference that when you took him to the echo lab and when you brought him back from the echo lab he was in your arms rather than in his crib?





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2 A. Yes, it is.

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4 MR. STRATHY: Thank you. Thank you,

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6 Mr. Commissioner.

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8 THE COMMISSIONER: Yes, Mr. Hunt?

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10 MR. HUNT: I am tempted to tell you,

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12 Mr. Commissioner, that I have no questions.

13

14 CROSS-EXAMINATION BY MR. HUNT:

15 Q. Miss Nelles, of the two monsters  
16 that you have heard so much about this morning, I  
17 am Hunt and Percival follows me. I represent as you  
18 have heard the Attorney General, the Crown Attorneys  
19 McGee and Wiley and some of the Coroners.

20 I want to say to you at the outset  
21 although it will come as no surprise, that we have  
22 heard from most of your colleagues on the team over  
23 the last few weeks, with the exception of Phyllis  
24 Trayner. I think just about every complimentary  
25 descriptive phrase that could be applied, reasonably  
applied to someone's abilities as a nurse has been  
applied to you by those people. You have been  
described as competent, confident, intelligent,  
ability to size up a situation and act, and cheerful,  
happy, and I certainly tip my hat to you to those  
qualifications and credentials as a nurse that you  
have. If I could get Mr. Sopinka to say half of





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2 those things about me I would be just delighted.

3 MR. SOPINKA: If he stops now I will  
4 say them all.

5 MR. HUNT: I have no further questions.

6 THE WITNESS: Thank you very much for  
7 those remarks.

8 MR. HUNT: You are welcome.

9 Q. I would like to first ask you  
10 about when you met Phyllis Trayner. I understand that  
11 it was when you transferred to 5A which was some time  
12 in the fall of 1979?

13 A. That's right.

14 Q. That would have been about  
15 October?

16 A. Yes, it would have been.

17 Q. Then you told us that you worked  
18 rarely on her team through to the time when you were  
19 actually assigned to her team in June?

20 A. That's right.

21 Q. Can you tell me how often that  
22 would be, once, twice, or more?

23 A. As I say I remember actually  
24 orientating with Phyllis. I believe that the next  
25 time, the other times that I worked with her would  
have been, as I say, rare. I really can't say exactly





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2 how many times I would have worked with her. She  
3 was not on the particular team that I was assigned  
4 to, but the setup on 5 was different than the setup  
5 on 4 and during the day shift two teams would work,  
6 would be assigned to work. So unlike on 4A where  
7 you would only have one team working at one time, on  
8 5A we often had two teams working together. So the  
9 likelihood would have been more common that I would  
10 have worked with her team, but as I say I can't  
11 remember how many times. My recollection is that it  
12 wasn't that often.

13 Q. We have heard quite a bit of  
14 evidence from some of your colleagues about, could we  
15 call it a conflict of sorts, that existed between you  
16 and Phyllis Trayner. Without burdening you with the  
17 evidence I think I can fairly say that right from the  
18 first nurse we heard from, Nurse Browne, down through  
19 Nurse Scott, the last nurse we heard from, there was  
20 varying accounts of disagreements between the two  
21 of you, not always major, but sometimes major. To  
22 the point where I think Nurse Scott said that it was  
23 her perception that you and Mrs. Trayner disagreed  
24 most of the time about things. Now the impression  
25 that I got from the evidence that we have heard was  
that the disagreements to whatever extent they existed





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2 between the two of you, went back almost if not to  
3 the point in time when you joined her team in June of  
4 1980?

5 A. That could be so, yes.

6 Q. You mentioned the dispute that  
7 the two of you had in July over the calling of the  
8 Code 23/Code 25 for Amber Dawson, and I think that was  
9 on July the 28th. What I wondered was whether that  
10 incident was the culmination of difficulties that had  
11 existed from early June when you joined the team, or  
12 was that really the first manifestation of the problems  
13 that the two of you were having?

14 A. That was the first incident that  
15 I remember as causing me some stress or some reason  
16 to feel that we were not functioning as two team  
17 members should.

18 Q. This then is the first time it  
19 came out in some sort of observable way?

20 A. Some concrete fashion, yes.

21 Q. But prior to that did you have  
22 a feeling that there was sort of a boss/employee  
23 relationship as opposed to a team relationship right  
24 from pretty well the start?

25 A. I don't recall thinking that  
26 until, as I say, this is the one incident that I first





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2 can actually remember.

3 Q. But you definitely had a feeling  
4 by I guess September when this incident occurred with  
5 Baby Gage, that had crystallized in your mind that  
6 this was sort of a boss/employee situation as opposed  
7 to a real team effort?

8 A. Yes. I think I can clarify it.  
9 I really didn't think of her as my boss, but I thought  
10 that she was at times authoritative rather than trying  
11 to work as a team.

12 Q. And I think you indicated on  
13 Monday that the differences between you were never  
14 really totally resolved because of the fact that at  
15 one point the two of you had to confront each other  
16 over the situation, and there was always a tension  
17 there as a result of that?

18 A. I think things got better,  
19 definitely. I think that we didn't feel, or certainly  
20 I think that she tried a lot harder because she had  
21 been made aware, but I think that what I meant was  
22 that you can never actually forget that there was  
23 some disagreement between us that had to be confronted  
24 if we were going to continue.

25 Q. That occurred some time in the  
fall I think you said, around October or so?





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2                   A.     I don't remember when the  
3 evaluation was, it was some time in the fall, yes.

4                   Q.     You gave us your account of the  
5 incident that occurred during the resuscitation  
6 efforts of Baby Hines, in March. I think in fairness  
7 I have to say that the evidence that we have heard  
8 from others with respect to that incident has sort of  
9 characterized it somewhat differently than you did.  
10 Perhaps the fairest summary was given by Nurse Coulson,  
11 who suggested that really during that time there was -  
12 this is at the resuscitation effort, that there was  
13 over this pacemaker a bickering, she used the word  
14 "bickering", between you and Phyllis with respect to  
15 the correctness of the pacemaker, to the point where  
16 Dr. Costigan had to ask "Ladies, keep it down". Then  
17 she, after it was over, spoke to both of you about  
18 there being a proper time and place for everything,  
19 and that as far as she was concerned the matter was  
20 resolved at that point when she spoke to you.

21                  Now, does that accord with your  
22 recollection of the events?

23                  A.     I do not remember Mrs. Coulson  
24 speaking to us, no. It is my feeling that the medical  
25 people did not remember anything, and they certainly  
   did not feel that - it is not my recollection that it





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2 interfered at all with the arrest, and that is why it  
3 is my feeling that it wasn't anything but a disagree-  
4 ment that took place at a time when we were just  
5 simply trying to get exactly what the physician wanted.

6 Q. I think no one has suggested  
7 that it interfered with the resuscitation efforts,  
8 but that your recollection differs in that you don't  
9 recall Dr. Costigan asking you to keep it down?

10 A. Right.

11 Q. And you don't recall Kathy  
12 Coulson speaking to both of you afterwards about the  
13 incident?

14 A. But I don't believe Dr. Costigan  
15 recalled saying that either.

16 Q. Well, we have heard at least  
17 from Miss Coulson and I think perhaps from one other  
18 that that comment was made. Now I am not commenting  
19 on whether anybody remembers saying it, or whether you  
20 were in a position to even hear it, but your  
21 recollection is you don't recall anything like that?

22 A. No, I do not.

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Q. So, if others, as may be, took from the conflict or the conversation that transpired at that time that it was something more than a discussion, then from your point of view you differ in your recollection of that incident?

A. Yes, I do.

Q. Was Phyllis Trayner really the only person of all the people that you worked with on 4A/B that you had this difficulty relating to?

A. That's a difficult question to answer because it was very important that Phyllis and I try and establish a working relationship because she was my team leader and every time that I came to work at that Hospital I had to work with Mrs. Trayner and I think for us to be effective as a team that we had to overcome any differences that we had and I think that's the reason that in October I went to Mrs. Radojewski and said I would like to have this resolved.

Q. Well, it may be that because of the position, her as a team leader and you as a team member, there was some added edge to the relationship but in terms of all the people that you had to work with on a daily basis on that ward, those two wards, was not your relationship with her





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more strained than your relationship with anyone else  
that you had to deal with?

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A. As I say, I find that really

hard to answer because I had to work with her  
constantly, whereas, other people, it wasn't as  
important to me that I establish a working relation-  
ship. Yes, it is the only relationship that I can  
think of that certainly led me to confront my head  
nurse about.

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Q. All right. Well, at any point  
in time during your relationship did you yourself  
ever feel particularly threatened by either Phyllis  
Trayner's personality or her abilities?

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A. No, I did not.

16

Q. And did you ever perceive at  
any time that she might have felt threatened by  
your abilities or your personality?

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A. I think that we had different  
personalities and I perhaps am more outspoken than  
Mrs. Trayner is.

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Q. I think we have heard from

some of your colleagues about the differences in  
your personalities. I think a fair summary might  
be that Phyllis was a rather emotional person who  
was through this period of time constantly seeking





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reassurance about matters that were happening and  
really except perhaps in resuscitation situations  
was not what one would describe as a take charge  
person in any given situation. Would you agree  
with that as a summary?

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A. I would certainly say that she  
was a more emotional type person than I am and I  
think that it is fair to say also that she did  
seek reassurance.

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Q. All right. Well, was she  
what we would call a take charge person; this is  
leaving the resuscitation attempts aside, just in  
the normal routine on the ward?

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A. I think she functioned as a  
team leader.

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A. I can't answer that, that was  
not my perception, no.

Q. During that period of time,  
did you and Mrs. Trayner socialize?

A. Only at ward functions.





Nelles, cr.ex.  
(Hunt)

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Q. So, other than business and  
business related occasions, there wasn't really a  
social relationship?

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A. There were some showers and,  
as I say, ward parties and there were a couple of  
occasions where I went to someone else's house and  
she and her husband were there.

8

Q. Well, did you regard her as  
a personal friend during that period of time?

10

A. No, I did not.

11

Q. And I take it that you haven't  
maintained a friendship with her since you left the  
Hospital in March of '81 over the last two years  
since then, three years since then.

14

A. I myself have not contacted  
her, no.

16

Q. You haven't spoken to her  
at all in the intervening time?

18

A. I spoke with her at the  
preliminary hearing.

20

Q. But I mean other than times  
when you were at the Court during your preliminary  
hearing, you didn't have an occasion to be speaking  
to her?

23

A. Not speaking to her, no.

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Q. Now, I would like to go back and review for a moment the deaths that occurred beginning on June 30th of 1980. It may be of assistance to you, I don't know if you have it, it is Exhibit 383, which is the summary prepared by Commission Counsel.

Just so I have it, going into this period June 30th on, your experience with death on cardiology wards was one successful resuscitation while you were working on 5A?

A. I believe it was successful, yes.

Q. All right.

And during the month of June when you were on 4A working with the Trayner team there were two children who died?

A. I don't recall exactly.

Q. All right. I thought you had indicated there were two deaths during June and that insofar as Baby Woodcock was concerned at the end you had really no recollection as to whether you were involved with the resuscitation efforts or not?

A. I believe that Mr. Lamek said to me that there were two deaths on the cardiology





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floor that month but I didn't recall them or I didn't remember being involved in them.

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4 Q. All right. So, going into  
5 July then, aside from the experience you had with  
6 what you believe was a successful resuscitation  
7 effort, it may not have been, when you were on 5A,  
8 you really had no experience with deaths of people  
9 that you were involved in the care on cardiology?

10

A. No.

11

Q. Now then the first patient  
I take it that you had that arrested and died was  
Baby Bilodeau on July 22nd.

12

A. That's right.

13

Q. And your recollection with  
respect to that was very vague. You recalled I  
think that he was in an Isolette in Room 418 but  
you had no recollection of the events leading up  
to that and no independent recollection of what  
occurred at the time.

14

Now, Baby Bilodeau being the first  
child that you were actually caring for that died on  
the ward during the time when you were charged with  
the responsibility of looking after him, I would  
think must have been a traumatic event?

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A. Yes, it was.

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Q. And distressed you?

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A. Yes, because it was my first  
4 child that had died.

5

Q. Okay. And at least inasmuch  
6 as the baby wasn't on constant nursing care that  
7 night, whatever its condition was in terms of risk,  
8 that particular shift, death wasn't felt to be  
9 so imminent that the baby required that specialized  
care?

10

A. He did not require constant  
11 care, no.

12

Q. So, this would add I suggest  
13 to the distress that you would feel on the first  
14 baby that you had care of that died?

15

A. I cannot say that I did not  
16 have, was not surprised by his death though.

17

Q. All right. But I guess my  
18 question is, I'm sure you must have thought a lot  
19 about this death, it being the first one that you  
had encountered of a patient that you were  
20 responsible for?

21

A. I thought of it in terms of  
22 the actual Code 25 and whatnot, yes.

23

Q. That's what I mean. I'm not  
24 suggesting dwelling on it morbidly but as a competent

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nurse faced with the first traumatic incident of this type it is the sort of thing that I suggest you would replay in your mind looking for signs or symptoms that led up to the arrest and checking, really checking what you did to make sure that you had done everything that you could in terms of the care you were giving to the baby.

9

A. Yes.

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Q. You look like you had something more to say?

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A. Well, I think you are asking me that it was my first arrest and that it should stick out clearly in my mind.

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Q. You were anticipating me but I was going to suggest that an event of that impact is something that one normally wouldn't quickly forget.

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A. And I didn't forget the condition of the child and what his diagnosis was and medical factors about him, I did not forget those kinds of things, but I then quickly was faced with more arrests and my memory is that it all sort of feeds into one and I have pictures of various things in my mind but I cannot clearly define what happened at what day and that kind of thing.





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3 Q. All right. Well, I think  
4 Baby Taylor died within a few days on the 27th,  
5 according to our exhibit here, and then on the  
6 28th, which was only six days later, Baby Dawson  
7 died, and this was another baby that was under  
8 your care on the particular shift when the baby  
9 arrested and died.

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Now, I guess you have recollection  
with respect to the problem over calling the Code  
23 and the Code 25 with respect to this baby, but  
again, insofar as the events leading up to it and  
the arrest itself you don't have any independent  
recollection and again I guess my question is the  
same as the last baby we dealt with, that this  
being the first time you are confronted with this  
situation and it having some particular impact on  
you because of that, would you not again be replaying  
that evening in your mind with a view to looking  
to see if the care you gave was adequate and  
proper and looking for some clue or sign as to  
what went wrong.

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A. I had no reason to do that  
really. I mean, we have passed over a lot of  
water since then and I think that the morbidity  
rounds where these children were actually discussed





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and where the physicians themselves were looking,  
as well as all of the staff involved with the  
children, at the actual condition of the child  
and that they had no reason to question the care  
or whatever lead me to believe that these were  
sick children and unfortunately they reached the  
result that they did.

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Q. All right. My friend just  
views whether I do that with all of the prosecutions  
I lose and I do and that's why I'm asking these  
questions, I can still remember them.

MR. SOPINKA: But nobody assures  
you you did a good job.

MR. HUNT: Q. Now, within a couple  
of nights of July 28th Baby Hoos died. This is on  
the 31st, this would be now another baby that you  
had direct responsibility for and this would be  
the third child that you were charged with that had  
died since July 22nd. So obviously a very trouble-  
some and distressing event for you that night. It  
wasn't over because on the very next night Baby  
Turner died, the fourth child that you had  
responsibility for and again I just note that with  
respect to both those babies that you don't have  
a recollection, independent recollection of what

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Nelles, Cr.ex.  
(Hunt)

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occurred on the nights?

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A. Right.

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Even though I think I take  
from your answer that you were concerned in  
replaying these events in your mind to see that  
everything you did was up to scratch.

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A. I think that my recollection of that period, I think of it as a period of time that there was no doubt that the period of July and August caused me a lot of distress in the sense that I knew that we had lost a number of children and we had gone through a very bad time. That is how I remember it.

Q. By the 1st of August, I think Mr. Lamek pointed out, in the six nights that you had worked between the 22nd and the 1st, four children under your care, one of whom, Hoos, was under constant nursing care had arrested and died and after about a two and one half week respite Baby Monteith then arrested on the 19th of August to bring to a total in less than a month, that is from the 22nd of July through to the 19th of August, five children that you had under your care, one of whom was under constant nursing care, had died.

A. Right.

Q. And this period I am suggesting was one where you were for the first time being faced with the fact of death on a cardiology ward, children that you were responsible for.

Now, I guess why I am asking these questions is to lead up to the question I really





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want an answer to and that is in all of the evidence  
that we have heard about these events that occurred  
in July and August, we heard about the fact that  
you and Phyllis Trayner spoke to Nurse Costello  
back at the end of July about the death of Baby  
Dawson when that baby died, questioning whether  
you had done everything correctly, but what I did  
not hear in the evidence is any cry from you to  
somebody saying "Look, I know that what I am doing  
is right. I have had five children under my care  
die in under a month and I know what I did is right.  
Something is going on. Somebody had better get to  
the bottom of it." I don't mean to be discourteous  
but I think the evidence has shown that you are not  
a shrinking violet when it comes to expressing your  
opinion and views and given that that occurred and  
happened to you within that one month period my  
question is why at that time were you not screaming  
at somebody to get in there and find out what was  
going on.

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A. Other than that I was a nurse  
on the floor, that the physicians themselves were not  
saying that these were unexpected deaths, they seemed  
to take the view that they were very sick children  
and my experience in looking after them was that they





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were very sick children. Yes, we were seeming to go through a very bad period and that was the only thing that I attributed it to, was that unfortunately we had a rash of children that were ill and for reasons that seem to be satisfying the physician in that there was never any question or I certainly never heard anything that the nursing care or whatever was being questioned at that time. So I just, as I have explained, felt that we were having a bad time.

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Q. By that time, the mid-part of August and certainly by the end of August, people with more experience than yourself in cardiology and on 4A and 4B were voicing the opinion that what was happening was of concern. It was unusual and something that that they had not encountered before.

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A. I don't recall hearing that it was unusual.

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Q. Unusual to have that many deaths in that period of time.

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A. As I said to Mr. Lamek, I had myself not cared for or had not had experience with small infants with such severe cardiac vascular problems and I had no way of knowing as a nurse, I





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had no reason to question that there was anything except that they were sick and that they happened to expire when I was looking after them.

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Q. We have seen in respect to some of those children that there was a question about why they died that was still being discussed in September, even at the morbidity and mortality conference in early September.

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A. I did not see it as a question of why they had died. I saw that conference as a means of helping the nursing staff and physicians to have a chance to talk about those deaths because as nurses I had never heard the results of autopsy reports. That conference was the first time that I ever heard what the results of the Bilodeau, Taylor and I forgot who else was involved in that particular morbidity conference but --

Q. Baby Turner.

A. Turner, that that was certainly the first time that I had heard any results of the autopsy reports.

Q. I think you said that you took some comfort from the discussions of those deaths at the morbidity/mortality conference in early September.





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A. Because we talked about all of the care that the child had received from either stays in the Intensive Care or care on the floor, but as regards to the physicians we were looking at the child as a whole and the care that he had received from the first day he arrived until the day he died, in this case.

Q. Did you go to the second conference that took place at the end of September?

A. No, I did not.

Q. I guess I am puzzled by some evidence that was given by Nurse Frise who did not take the comfort that you took from the explanations that were being given in those early days for the deaths. To put it completely, and I am looking at Volume 109, and it is page 4715 and 4716, she was asked by Mr. Lamek:

"Q. We have heard evidence some many months ago now as to what was said at those meetings."

That is referring to the ones in September.

"Do I fairly characterize it as the physicians looking at certain deaths and saying, look, these children were terribly ill. There is nothing





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"you did wrong. There is nothing you could have done to change the course of events. Was that the thrust that you remember?

5

A. Yes.

6

Q. Were you reassured by those meetings?

7

A. No, I was not.

8

Q. Can you tell me why not? What troubled you, notwithstanding those meetings or the meeting that you attended?

9

A. In that some of the children that did die, at the mortality rounds they would explain the heart defect and they would say why the child had died because of certain heart defect, but I knew that some of the children weren't that sick and the particular defect they had, shouldn't have died as soon as they did.

10

Q. Okay. Well, whether you were right or whether you were wrong I take it that you were still not persuaded by the reassurance that you

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"had been given at the mortality  
conference that you attended?

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A. That is correct.

5

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Q. At the meeting of October 22nd,  
did it appear to you that other nurses  
similarly were not satisfied by the  
reassurances they received?

7

8

A. That is correct."

9

With respect to Nurse Frise, she  
would seem to indicate that the answers that were  
being given in September, she was not accepting,  
and she was not the person who was being most  
affected by the deaths that had occurred in July  
and August.

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MR. SOPINKA: In the review of  
the evidence which my friend has done fairly, I  
think it should also be pointed out that the chart  
shows that she was not present during any of those  
deaths. That may be of some significance.

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MR. HUNT: Q. I accept what my  
friend has said, and can you assist me as to why  
when apparently she and other nurses by October  
were not accepting what were being said about deaths  
that were a puzzlement on the ward, why you were  
taking such reassurance from what the doctors were





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saying?

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A. I don't know whether I was really taking reassurance as much as I accepted what they said. As Meredith describes in her statement, they talked about the medical condition and whatnot to quite an extent. In other words, the physicians themselves talked all kinds of data about various pressure values in the heart and whatnot which I as an RN did not understand a lot of it and I would like to think that Meredith as an RNA would not have understood some of it. They seemed to think that the care that was given was appropriate and that the only recommendation that came out of that meeting was that perhaps the children needed more intensive type of watching. In other words, that they were children that warranted extra attention and that was where we first heard discussion about an intermediary Intensive Care Unit.

Q. I guess what I am getting at here, I am looking for some indication of alarm, of outcry on your part during this early period where in fairness by the middle of August when Baby Monteith died, Baby Monteith was the seventh baby to die since Laura Woodcock died on June the 30th,





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this was really, if I can put it this way, a Susan  
3 Nelles problem inasmuch as and maybe more so than  
4 a Trayner team problem. You had five of those  
5 children under your care that had died in that  
6 period of time. Granted they were all in the  
7 presence of the one team but in terms of whom they  
8 affected and impacted on it had to be you more  
9 than the others because of the care that you were  
10 charged with giving them at the time of their death.  
11 I guess what I am asking you is was there alarm,  
12 was there on your part an outcry for somebody to  
get in there and find out what was happening?

13

A. No, there was not. I think  
14 in fairness as well that the morbidity and mortality  
conferences were held and that in fact we were  
15 reviewing what had taken place, to some extent.

16

Q. I only point out what the  
17 others have said to show you that some people were  
18 not buying what was being said.

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A. Right.

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A. I felt satisfied in the

answers that were given, yes.

Q. The next baby that you were





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10 night that you were a team leader?

11 A. No, I don't believe it was  
12 the first night because I had been team leader for  
13 the month of September.

14 Q. That was the first time  
15 when you were the team leader that a baby had died  
16 while you were the team leader?

17 A. I don't know.

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3 Q. I think the only other one  
4 while you were on after your holidays was Laurette  
5 Heyworth on September the 2nd. I don't believe  
6 you were a team leader on that night, do you have  
any recollection of that?

7 A. I was certainly on duty that  
8 morning. I believe I was team leading that day but  
I don't remember exactly.

9 Q. Well the death occurred at  
10 8:30 in the morning, and you were on long days and  
11 had come on at 8 o'clock?

12 A. Right.

13 Q. Or 7:30.

14 A. Well perhaps we can look it up  
and see if I was team leading that day.

15 Q. I think that perhaps my friend  
16 may have cleared it up, and see if this sounds  
17 right. Perhaps that baby was the first arrest call  
18 and death when you were a team leader.

19 A. The first child?

20 Q. Yes.

21 A. But I believe she was a "No  
Code."

22 Q. I think Heyworth was a "No Code",  
23 but I was talking about Gage, I am sorry, that was

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2 the first arrest call and death while you were a  
3 team leader?

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A. The first arrest call, I  
will take your word for it.

5

Q. Well I am taking Mr. Lamek's,  
so if it comes back we will --

7

MR. LAMEK: Don't do that.

8

Q. Then through the period October  
9 to February there were-- of the deaths that are  
10 characterized as suspicious on this chart occurred,  
11 and you were on for six of those, and on my reading  
12 of the chart four of the six that you were on four  
13 of the children were under your direct care, that  
14 is McKeil, Lutes, Gosselin and Fazio, that takes  
us through to the end of September.

15

A. The end of ...?

16

Q. I am sorry, the end of February.  
I am sorry, with respect to those you have indicated  
again that you have little recollection. During  
this period of time I think you have indicated that  
you didn't --

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A. I am sorry, did you say five  
or six?

22

Q. I said six.

23

A. I only see five; one, two, three.

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2 four, five and of those that were actually assigned  
3 to me one, two, three, four.

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5 Q. All right, I stand corrected.  
6 Four out of five that died during that period were  
7 children under your care, McKeil, Lutes, Gosselin  
8 and Fazio.

9

10 Now you have indicated that during  
11 this period of time you didn't discern any pattern  
12 developing in the deaths?

13

14 A. No, I did not.

15

16 Q. And I think the one comment that  
17 you made that surprised me was that you didn't  
18 discern at that point in time that these children  
19 were all dying at night?

20

21 A. I don't remember making  
22 that observation, no.

23

24 Q. Well, why I am puzzled is  
25 just about everybody else that has testified has  
indicated that by some points in July, August, the  
end of September, they had begun to discern a  
pattern that the children were dying in the  
early morning hours in the presence of the same  
team, and it would seem that you are the only one  
who as a regular member of that team, it hadn't  
dawned on you until March that the children were





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2 all dying during the same period of time and at night.

3 MR. ROLAND: Mr. Commissioner, we are  
4 all about to stand up. Mr. Hunt is really over-  
5 stating it when he says everybody realized that by  
6 July, August, September. As I recall the evidence  
7 the nurse witnesses that really recognized it I think  
8 were the night supervisors, they were the earliest  
9 ones and of course they work only at night. It  
10 seems to me that the other nurses certainly they  
11 all did not recognize it at that stage, and some of  
12 them didn't recognize it until quite a bit later in  
13 1981. If Mr. Hunt can show us --

12

13 MR. HUNT: Yes, I can take you right  
14 to the pages, and I will do that.

15

16 THE COMMISSIONER: Ms. Cronk wants to  
17 contribute.

18

19 MS. CRONK: I hate to get into the  
20 fray, but just to assist my friend as he takes you  
21 to the pages, two of the members of those teams,  
22 Janet Brownless and Mary Anne Christie placed their  
23 first conscious observation of that fact later in  
24 the fall.

25

26 MR. HUNT: First of all to assist  
27 everyone I said regular members of the team, Janet  
28 Brownless I don't think was a regular member of the





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5 2 team.

3 MS. CRONK: Mrs. Christie was.

4 MR. HUNT: And I will deal with Mrs.  
5 Christie then. Let's deal first with Nurse Browne.  
6 Her recollection...

7 THE WITNESS: Pardon me, but who is  
8 Nurse Browne?

9 Q. Well it is Carol Browne, Carol  
10 Putherbough.

11 A. Okay, she wasn't Browne then.  
12 Q. All right, I am sorry, we only  
13 know her as Browne.

14 A. Okay.

15 Q. Volume 84, page 8236-8237,  
16 by August Nurse Brownewas aware the deaths were  
17 occurring at night in front of a single team.

18 Nurse Costello, Volume 93, page 1041-  
19 1043, became aware of the increased deaths in July  
20 and observed they were early at night or in the early  
21 morning hours in front of a single team. The thought  
22 that it was restricted to a single team was crystalized  
23 in August or September.

24 Bertha Bell, we will leave her for a  
25 minute and deal with Lynn Johnstone.

Lynn Johnstone, Volume 103, page





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3472-3476; when she returned from her holidays in July she was told about the increased number of deaths in the presence of a particular team.

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Nurse Coulson; Volume 106, page

4126-4129. By early winter, September, October, November, December she noticed the timing of the deaths was within a narrow time band, appeared a vast coincidence to her. By December she considered it was not coincidence. Thought it had been bad luck, but by December she no longer felt that and she considered something was wrong with the IV or the care.

Nurse Radojewski; Volume 111, page

5053-5055. By the end of July, early August, aware of the deaths observed on the long night team, observed there was a pattern to the deaths - observed no pattern to the deaths but may have been aware of specific time frame the deaths were occurring in front of the same team. Volume 11, page 5010 in early September aware of deaths on the same shift early night time frame.

Then Nurse Bell I had a note for her which I can't find at the moment, and I will rest with the recitation of the evidence, and suggest that if my friends don't like the choice of words I used





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2 before, that the bulk of the evidence we have heard  
3 suggests that people were becoming aware from any  
4 point in July through to the late fall, of the fact  
5 that there was an increased number of deaths, that  
6 they were occurring at night, in a particular time  
7 frame at night, in the presence of the same team.  
8 That your suggestion that it was March when you  
9 first realized these deaths were occurring at night  
10 is difficult for me to understand given the experience  
11 of the bulk of the members of the team that you  
12 worked with during that period.

13 A. It is my feeling that we are  
14 dealing very much in hindsight at this point in time,  
15 and it is difficult for me to recall exactly when the  
16 feelings arose in terms of what my thought process  
17 was three, three and a half years ago. It seems  
18 to me that I did not really bring that kind of, sort  
19 of grouping of the deaths as being at a certain time  
20 frame, or being with our team particularly, until  
21 March. I guess maybe I am not as astute as my  
22 colleagues.

23 Q. What you are saying is you  
24 didn't appreciate the fact that these deaths were  
25 occurring by and large at night, in the early morning  
hours, until some time in March?





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A. I do not remember making that  
link, no.

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Q. Well we have heard from some  
witnesses that there were certain hours in the  
early morning when they began to watch the clock  
and get apprehensive about another baby arresting.  
And if they got past a certain point in time they  
breathed a sigh of relief, because the baby did not  
arrest that night. Did you ever experience that  
feeling?

11

12

A. I remember people making  
comments about that, and it was like a joke.

13

Q. It was like a joke?

14

A. In terms of, gee it's 5 o'clock  
and all's quiet.

15

16

Q. In other words, it's a surprise,  
we have made it through the period?

17

A. That's right.

18

Q. Did you ever hear anybody  
referring to certain hours in the early morning as  
the "witching hours"?

20

A. I don't recall that, no.

21

Q. In any event when you became  
aware of the clock watching, if I can call it that,  
that would have been some time in March?

24

25





1

2 A. Right.

3

4 Q. Now then we have the second  
5 major period of deaths, I think you even referred to  
6 the fact that there were two times that they  
7 concerned you, one was July/August and the other one  
8 was March?

9

10 A. Right.

11

12 Q. When we had this horrible spate  
13 of deaths between March 7th and the 22nd, nine in  
14 all, and you were on duty for eight of them, and  
15 three of those were under your direct care as I  
16 read the chart, that being Pacsai, Miller and Cook?

17

18 A. Right.

19

20 Q. And with respect to Baby Cook,  
21 as we have heard, you were on constant nursing care  
22 on the night that he died?

23

24 A. Right.

25

26 Q. Now again I suggest to you

27

28 that in March, as in July and August, you were really  
29 in a different position than the other nurses on the  
30 team, inasmuch as the main impact of the events of  
31 those nine deaths, there was more impact on you  
32 than there was on anyone else inasmuch as you had  
33 three of these children that was under your care,  
34 and one of them on constant nursing care which is





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more than anyone else during that month, on my reading, babies under your direct care. So I am suggesting to you that again you stood in a different position in terms of the impact of the events of those days?

A. I don't remember feeling that way, not at all.

Q. Well again in March with you in this position of looking after these children, three in number that died over this period of days from the 7th to the 22nd, I think you have indicated it was very distressing to you?

A. Yes, it was.

Q. And again I look to the evidence for some cry for you, or request for somebody to get in there and find out what was going on?

A. I think I did.

Q. When was that?

A. I think, I am not sure if this gets into Phase II again, but I think at that meeting on Monday night that my cry was, I am glad there is an investigation going on.

-----





BmB.  
jc 1

J.1 2

Q. All right, that's on Monday  
night, the 23rd, at Liz Radojewski's house?

A. Right.

Q. Right. And I intended to deal  
with that. But as things were developing during the  
course of that month, as I understand it, you were  
the team leader on the night that Baby Warner died on  
March the 7th and team leader again on the night that  
Baby Gionas died March 9th and then you were charged  
with the responsibility of looking after Pacsai,  
Miller and Cook?

A. Was I the team leader when  
Warner died? I don't have that on mine.

Q. That's the note that I have  
from your examination in chief and on this chart if  
you look over in the Comments section beside Warner  
I think you will see that you were the team leader on  
4A?

A. I'm sorry, I was looking at the  
symbols.

Q. All right. So, my point is though  
again that from the point in time when the deaths  
started on March 7th you were affected by them?

A. As was everyone else.

Q. I don't dispute everyone was but

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J.2

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I'm suggesting that you were more so by virtue of the fact that you were either the team leader or you were charged with the specific care of the child when it died during that period. I have looked for some outcry from you during that period for somebody to find out what was going on and you indicate as of the night of the 23rd you were looking for something by way of an investigation to find out what was happening. But prior to that time no?

A. No, and I think that it is very hard to explain to you that we had no reason to believe that there was anything, any reason to question it. I mean, I am a nurse in a medical facility and as a nurse it's a fact of life that babies are sick and it is also a fact of life that sometimes they die.

(2)

Q. But you say we had no reason to believe that there was anything amiss. I suggest that wasn't universal amongst the colleagues that you worked with because we have heard from Nurse Coulson that by December she had in her own mind ruled out coincidence and was looking for something else being wrong either in terms of the IV or the care?

A. But she is a nursing supervisor who does not work on my floor. So, I would not have a lot of contact with her.





J.3

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Q. I am not suggesting that she  
expressed these views to you.

4

A. Right.

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Q. I am not suggesting that. I am  
just saying that the feeling that you express as to  
"we", meaning the group, having no reason to believe  
there was anything amiss was not something that by  
that point in time was universally shared by the  
people connected with Ward 4A and 4B.

10

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12

13

Well, all right, in any event as of  
the night of the 23rd at Liz Radojewski's you were  
making a special cry for someone to find out what was  
going on, and we will deal with that later.

14

15

16

A. Not a special cry but my wording  
as I remember it was that I was glad that an  
investigation was taking place.

17

18

Q. That wasn't an investigation that  
you asked for or that you asked anybody to undertake?

A. No.

19

20

Q. This is one that events caused  
to commence and began.

21

22

23

All right. Well, let's leave that and  
go to the question of the team leader situation. I  
think you indicated that you had ambitions to become  
a team leader and in fact you were told that you

24

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J.4

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2 would be considered for a position when the next  
3 opening came up, and this was some time in the fall  
4 of '80?

5

A. Right.

6

Q. And that was by Liz Radojewski?

7

A. Yes, she actually wrote it on  
my evaluation.

8

9

Q. All right. Now, you felt I take  
it that you were capable of being a team leader?

10

11

A. I felt that I should be considered,  
yes.

12

13

Q. All right. Did you feel that  
you were capable of being a team leader?

14

A. I think so, yes.

15

16

Q. And you felt that certainly back  
in the fall when the question was first raised with  
Liz Radojewski?

17

18

A. That was what came out of my  
evaluation.

19

20

Q. Did you feel that you were as  
capable as anyone else who was in the role of team  
leader at that point to fulfil those duties?

21

22

A. I felt that in terms of what my  
head nurse was saying to me, in terms of evaluation of  
my performance on the floor that she felt that I was

23

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J.5

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2 ready and I felt that also I was ready to at least  
3 attempt to fulfil that role, yes.

4

5 Q. All right. Did you feel that  
6 you were as capable as Phyllis Trayner to be the team  
7 leader?

8

9 A. I don't recall comparing myself  
10 to other people in that sense of the word. I recall  
11 thinking that in terms of what had been told to me  
12 that I had reached the stage that I had been on the  
13 floor long enough and I had gained enough experience  
14 and I had enough background that, yes, now I could  
15 be considered to at least think about fulfilling that  
16 role, but I didn't compare it, didn't think of myself  
17 as capable as anyone else.

18

19 Q. Now, it has been suggested by  
20 at least two of your colleagues, and that is Nurses  
21 Costello and Bell that in their perception, part of  
22 the tension that existed between you and Phyllis Trayner  
23 had to do with personalities and that in part might  
24 have been responsible or in part might have been  
25 grounded in the fact that you felt you were as capable  
of being a team leader as Phyllis was?

21

22 A. I felt that I was as capable an  
23 R.N. as Phyllis Trayner was. It had no relation to team  
24 leading.

25





J.6

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2 Q. But you felt you were capable  
3 of being a team leader as well?

4 A. According to that evaluation, yes.

5 Q. And do you agree or feel that  
6 that view that you had of your own capabilities and  
7 perhaps the way you expressed it may have been part  
8 of the source of whatever tension existed between you  
and Phyllis Trayner?

9 A. I don't believe so, no.

10 Q. Now, you indicated that you were  
11 upset, hurt in March or early March when you found out  
12 that Joan MacIntosh was going to be made the team  
13 leader when the vacancy had come up?

14 A. Right.

15 Q. And I think you said you weren't  
16 really angered by that so much as hurt that Liz  
17 Radojewski hadn't told you about it?

18 A. That's right.

19 Q. But were you not a little bit  
20 angry as well that you had been passed over?

21 A. I was annoyed that she had made  
22 that kind of move without telling me or explaining to  
23 me her reasoning behind, just selecting Joan MacIntosh  
24 for the position.

25 Q. It wasn't just because she hadn't





J.7

1

2 observed the formality or the nicety of calling you  
3 aside in advance and telling you she had given it to  
4 someone else but there was an element of upset because  
5 you didn't get the position?

6 A. My feeling was that in October  
7 or November on my evaluation that it clearly stated  
8 that I would take the team leader course or be  
9 considered for the next team leader position and here  
10 it was, it had occurred and Liz had not approached me  
11 to tell me and I was annoyed that as a head nurse,  
12 having written and conveyed to me this expression  
13 that she had not carried through on what she said she  
14 was going to do.

15 Q. Which was consider you for the  
16 position?

17 A. That's right.

18 Q. The next one available?

19 A. Right.

20 Q. And in addition to that, she  
21 hadn't told you herself?

22 A. Why, right.

23 Q. Right. Well, in her notes that  
24 she made herself, and they are in the exhibits, it is  
25 the preliminary hearing Exhibit 32A, Tab 17. Do you  
have a set of notes there? It is on the second page





J.8

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2 the one I am going to refer to. Do you see about  
3 three-quarters of the way down the page she's got  
4 under the heading of events between, it looks like  
5 November 2nd and April 12th of '81:

6

"Fitzgerald, Team Leader, Arbour

7

last day March 20th, '81, MacIntosh  
(arrow) moved up to team leader on  
8 her team."

9

And then a question mark.

10

11

12

13

14

"Nelles devastated re Joan's

promotion (passed on by the grapevine  
no direct verbalization from Sue)."

15

16

17

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Now, I think you have indicated you  
didn't have any direct verbalization with her about  
the incident?

A. As I explained that I was on

nights first of all. Actually, first of all - pardon  
me, I believe that I worked the nights some time in  
the middle of March. I went away for a week's time  
and when I came back I was again on nights and as it  
turned out that Sunday or that Saturday was my last  
night of work and I had not had the opportunity to  
approach Liz about this incident because I had been  
on nights (1) and (2) because I had been away.

Q. Now, it would appear from her





J.9

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2 notes that somehow she got the impression, not from  
3 talking to you but from the famous grapevine, that  
4 you were devastated by Joan MacIntosh's promotion.

5 Now, I say to you, firstly, did you  
6 say anything to anybody that you can recall that would  
7 have given them the impression that you were more  
8 than just upset by the fact that you hadn't been spoken  
9 to by Liz Radojewski first and that she hadn't  
considered you for the position?

10 A. Well, first of all, with respect,  
11 I think that you and I both know what a grapevine is  
like.

12 Q. Sometimes the grapes die there.

13 A. That's right, and things can be  
14 greatly exaggerated. My feeling is that I talked to  
15 Bertha and I talked to Phyllis and I explained what  
16 the situation was and I think that they agreed with  
17 me that they too felt that the proper ways of  
18 handling this were not done and I think that I can  
19 only speculate that perhaps that got exaggerated.

20 Q. All right. So, you did speak  
21 though to Bertha Bell and Phyllis Trayner about your  
22 concern and upset over the way the situation was  
handled?

23 A. That's right.

24

25





J.10

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Q. But I take it you wouldn't

describe your reaction as one of devastation in not  
having got this position?

5

A. Not devastation, no.

6

7

8

9

Q. Did you ever wonder at that point  
in time whether the fact that you didn't get it or  
that the promise wasn't carried through had anything  
to do with all of the deaths that had been occurring  
with respect to your particular team?

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A. No, not at all. In fact, I

knew the reason why Joan was probably promoted to the  
position of team leader. It was just the fact that  
Liz had not told me herself why she had done what she  
had done that upset me.

MR. HUNT: All right. Would this be  
a convenient time, Mr. Commissioner?

THE COMMISSIONER: Yes, all right,

until a quarter past two.

--- Luncheon recess.

-





Nelles, cr.ex.  
(Hunt)

AA  
DP/cr

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2        ---On resuming.

3                    THE COMMISSIONER: Yes, Mr. Hunt.

4

5                    MR. HUNT: Sir, if I could just give  
6                    you two more references. You will recall I was  
7                    reciting them earlier and I left out two. I have  
8                    now found them.

9

10                  THE COMMISSIONER: Oh, yes.

11

12                  MR. HUNT: You will have to go back  
13                  aways. It was in connection with the patterns.

14

15                  THE COMMISSIONER: Yes.

16

17                  MR. HUNT: And Mrs. Scott's evidence  
18                  was the reference that I was thinking of. It is  
19                  Volume 118, pages 6791 and 6792. Mrs. Christie was  
20                  Volume 122, page 7782 to 7785.

21

22                  THE COMMISSIONER: Thank you.

23

24                  MR. HUNT: Q. Now, Miss Nelles, if  
25                  I could just go back before we pick up to one area.  
I was asking you about Phyllis Trayner and whether  
you had contact with her after the preliminary  
hearing. I think you said that you had never  
initiated any contact with her since the preliminary  
hearing. Had she initiated or attempted to initiate  
contact with you at all since then?

26

27                  A.            She wrote me a note.

28

29                  Q.            Okay, because that was my next

30

31





1

2 question. You said there had been no verbal  
3 communication and it struck me that maybe there had  
4 been written communication.

5 A. She wrote me a note when my  
6 father died.

7 Q. Other than that, was there  
8 anything else?

9 A. No, there was not.

10 Q. All right. You indicated to  
11 my friend Mr. Lamek on Monday that as part of the  
12 resolution of the difficulties you were having with  
13 Phyllis you said to Liz Radojewski in October some-  
14 thing to the effect "I think we can work the problem  
15 out but if we can't then I should go on to another  
16 team as opposed to continuing to work with Phyllis."

17 Is that a sort of accurate summary of  
18 the resolution that you had proposed?

19 A. I think that I may have said  
20 there may be a necessity for us to consider that I  
21 move to another team and Mrs. Radojewski felt that  
22 we could work it out and that we should try and work  
23 it out.

24 Q. You were prepared to move to  
25 another team if the problem could not be resolved at  
that point?





1

2 A. Right.

3

4 Q. You also indicated though  
5 that you were not aware of any other discussions  
6 about splitting teams up in response to the stress  
7 created by the deaths in July and August?

8

9 A. I never heard that, no.

10

11 Q. Let me just indicate to you  
12 that again we have heard considerable evidence about  
13 that fact that it was discussed some time in the  
14 fall, probably in October, about the teams being  
15 split up and I will just indicate, firstly in Exhibit  
16 301 which is the Ward 4B meeting book, that is a  
17 separate little document stapled together, Miss  
18 Nelles, and I don't know if you have it, but at  
19 page 8, it may be difficult for you to read but  
20 under the date of October 23, 1980 there was  
21 apparently a meeting at which a number of people  
22 listed there were present: Karen, Shirley Anne,  
23 Meredith, Mary, Dianne, Mary Clooney, Gloria, Jane,  
24 Phyllis, and another name I can't make out, and  
25 the first thing is that Karen Power started by saying  
that we need support and that we don't need our team  
to break up.

I appreciate that you are not listed  
as being there but that is about the time when the  
evidence suggests that there was a discussion or

25





1  
2 more than one discussion about splitting up the teams  
3 in response to this stress. We have heard of the  
4 conversations from among others, nurses Browne or  
5 Putherbough, Costello, Bell, Johnstone, Frise and  
6 the only other person that indicated that she did  
7 not recall any discussions about that particular  
8 topic, although there may have been, was Liz  
Radoljewski.

9 So in light of the extent to which  
10 we have heard about it, having been discussed as  
11 a response to the stress that was created in July  
12 and August and to some extent September, do you find  
13 it puzzling that you did not hear about it?

14 A. No, I don't.

15 Q. We have also heard that it is  
16 a fairly unusual situation to break up teams as a  
17 result of something that was happening on the ward.  
18 In light of that, don't you think that it is strange  
19 that you were not involved in the discussion?

20 A. I never really thought about  
21 it and as I say I don't remember ever hearing that  
22 discussion before.

23 Q. With respect to that, there  
24 isn't any reason that you can think of why the other  
25 people would not have included you and/or Liz





1

2 Radojewski in those discussions is there?

3

A. Not that I can think of.

4

The only observation I can make is that none of  
5 those people appeared on my team.

6

Q. Well Phyllis' name was down  
there.

7

A. At the meeting, but we have  
8 not heard whether she --

9

Q. In any event, do you think  
10 at that time there was any - or were you able to  
11 assess whether you were feeling the stress of these  
incidents as acutely as the others?

12

A. I certainly was feeling  
13 under stress, yes.

14

Q. Were you able to gauge it in  
15 respect to the others? Were they perhaps feeling  
16 more distressed over this than you were at that  
17 time, that they would be talking about splitting  
up the teams, and not including you in it?

18

A. I don't recall hearing that  
19 discussion so I can't answer that question.

20

Q. But my question was in terms  
21 of the feelings of stress that you were having at  
22 the time as compared to the others, did you feel  
23 that you were reacting as the others were, under as

24

25





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2 much stress from the situation as they were or did  
3 you feel the others were reacting in a more  
4 distressed way?

5 A. No, I don't. We all were under  
6 stress.

7 Q. There is no reason in terms  
8 of the stress levels people were working under that  
9 you would have been excluded for any deliberate  
reason from that kind of a discussion?

10 A. Not that I know of, no.

11 Q. We have heard from a number  
12 of your colleagues as well that as early as August  
13 and certainly by October there were discussions  
14 about psychiatric counselling for nurses as again  
15 a method of responding to this stress. Were you  
16 involved in any discussions about the possibility  
of that occurring, along with other nurses?

17 A. I don't really recall any  
18 discussions about that until later.

19 Q. How much later?

20 A. I am not sure. Again I believe  
21 it was into the new year, February or March. I  
really don't remember.

22 Q. We have heard from Miss  
23 Costello that the matter was raised a number of times

24  
25





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2 by nurses first in August and then at a meeting in  
3 October and Miss Johnstone has said that the issue  
4 was raised first by Nurse Radojewski - sorry - that  
5 it was raised first with her by Nurse Costello and  
6 then she later spoke to Nurse Radojewski in the  
7 fall, in October, about it and was told at that  
8 time that the team was getting support from each  
9 other and it was not really necessary. So the  
10 evidence would seem to suggest that this discussion  
11 went on some time earlier than January or February,  
12 but you have no recollection of it at that time?

13 A. No, I don't.

14 Q. When you did hear them in  
15 January or February what was the proposal if any  
16 that was being discussed?

17 A. It was my understanding that  
18 perhaps in addition to Carol Putherbough and Janet  
19 Bead who were the two clinical specialists on the  
20 floor that we have another person act as a resource  
21 person.

22 Q. Again if the matters were  
23 discussed as the evidence suggests from some time  
24 in August through to October and you were not  
25 involved in the discussions at that time, would you  
take that as an indication that perhaps others were





1

2 feeling distressed from the situation more than you  
3 were and were seeking out resolutions that perhaps  
4 you were not involved with at that time?

5

A. It could be. I just don't  
remember.

6

7 Q. Nurse Johnstone says in  
8 Volume 103 between pages 3476 and 3477 that before  
9 she spoke with Radojewski she spoke with you and  
10 with Phyllis Trayner as well as other members of  
11 the team about the possibility, to see whether it  
12 was something that was needed or wanted. Do you  
13 have any recollection of that?

14

A. I don't recall that. I recall  
15 talking to Lynn but my recollection is that it was  
16 later on.

17

Q. It could be then perhaps that  
18 your timing on that particular topic is out?

19

A. It could be.

20

Q. That it did happen in the fall  
as opposed to the early winter?

21

A. I don't remember it happening  
then. I remember it happening later.

22

Q. The deaths dropped off of  
course in January and February in terms of numbers  
23 whereas after July and August and September they were

24

25





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2 high and the stress as we have heard it was at a  
3 peak at that time, which perhaps would suggest that  
4 the issue was first raised back in the fall?

5 A. They were at a peak I would  
6 say the middle of August and I left to go away for  
7 two weeks and I guess I went away on vacation and  
8 I felt much better when I came back, maybe just  
9 because I had been able to get away and I don't  
10 recall that September was a particularly stressful  
11 month. I remember it as being much better after I  
12 got back from vacation.

13 Q. Certainly when you left in the  
14 middle of August, stress level was high?

15 A. Yes, it was terrible.

16 Q. Now we have heard from again  
17 a number of your colleagues about Phyllis Trayner's  
18 reaction to the various arrests and deaths and we  
19 have heard from more than one that Mrs. Trayner more  
20 than anyone else talked about the deaths constantly,  
21 sometimes to the point where other nurses were  
22 disturbed and distressed by the fact that she dwelt  
23 on them to such a degree. In the case of Mrs.  
24 Johnstone, at one point she found she had to stop  
25 talking to Phyllis in order to get away from her  
constant discussion of these deaths. Was that your





1

2 experience that she more than anyone else was pre-  
3 occupied with the deaths of the children?

4

5 Phyllis seemed to need to have a period of time  
6 when she would sit down and want to talk about what  
7 had gone on in the house beforehand, and this is  
8 when she often was quite emotional. I did not find  
9 that unusual. As I say, we all react differently.

10

11 Q. Did you find that after that  
12 period of time, immediately after the death when she  
13 would need time to talk about it, that she continued  
14 to discuss the death and seek reassurance as to  
15 everything possible having been done for the  
16 children, and no one being at fault?

17

18 A. I think that is the kind of  
19 behaviour she displayed at times, yes.

20

21 Q. We have heard as well that  
22 after Justin Cook died, and you have indicated that  
23 a blood sample was taken from Justin Cook after he  
24 died which was unusual --

25

26 A. I did not remember that but  
27 again that appeared in my notes so that is the most  
28 accurate.

29

30 Q. So you are prepared to accept  
31 the accuracy of that?

32

33





1

2                   A.        I certainly remember the  
3 samples being taken from the intravenous bags and  
4 what not.

5

6                   Q.        That of itself was an unusual  
7 occurrence?

8

9                   A.        Yes, it was unusual.

10

11                  Q.        And we have heard that Phyllis  
12                 Trayner was very agitated at the sample being taken  
13                 from Justin Cook after he died and concerned about it  
14                 to the point of demanding an explanation for it, and  
15                 very upset at not receiving an explanation. Did  
16                 you notice that reaction in her?

17

18                  A.        Yes, I did.

19

20                  Q.        Did you share the same type  
21                 of concern that she had about the sample being taken?

22

23                  A.        It did not concern me in an  
24                 undue fashion, no.

25

26                  Q.        Were you puzzled by the fact  
27                 that she was so agitated that there be an explanation  
28                 for the sample having been taken?

29                 - - - -

30





BB.1  
DM. 1  
jc

2                   A. I wasn't puzzled by it, but I  
3 think I wished that she would stop going on about it.

4                   Q. And in what way did she go on  
5 about it?

6                   A. Again when it first happened,  
7 and when Dr. Jedeikin went into the room to get the  
8 samples and when he came out, and I believe that  
9 morning after the arrest she said a couple of things,  
10 you know: "Why are they doing that?". Then at the  
11 Monday night meeting she still was telling the other  
12 nurses who had not been there what had gone on, and  
13 sort of saying "Why were they doing that? What are  
14 they looking for? What are they trying to find?"

15                   Q. Did she speculate at all as to  
16 what she thought they were looking for or trying to  
17 find?

18                   A. I don't recall that she  
19 speculated. I got the impression that she was  
20 concerned that we had done something wrong.

21                   Q. And that this taking of the  
22 sample was part of some examination of the situation  
23 that might reveal something had gone wrong?

24                   A. I don't know what she thought,  
25 really.

26                   Q. All right. Now we have heard





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some evidence concerning the topic of euthanasia, or mercy killing. Do I understand that this is a topic that is of a certain amount of interest within the medical profession generally and has been for some number of years?

A. I think that is true to say, yes.

Q. And I gather that the central focus of this issue insofar as it relates to the children involved the quality of life that they can expect?

A. I guess so, yes.

Q. We have heard that the topic of quality of life was something that from time to time was discussed in a general way on 4A?

A. I believe it came up on occasion, yes.

Q. And did you yourself get involved in any discussions from time to time about this?

A. I can't remember any specific instances, but yes, I believe - in particular when we had children on the floor who - and the physicians for some reason had ordered a "No Code" or ordered "Do not resuscitate", then I think that was probably one of the times that spurred conversation.

Q. I wasn't suggesting a specific





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conversation with respect to any child, but your recollection is that from time to time you may have been involved in these conversations on the topic generally?

A. My recollection of them, the one - any time that I can remember, seemed to be where we had a "No Code" child on the floor.

Q. And this would generate discussion about what, the pros and cons of euthanasia?

A. Well, I wouldn't term it euthanasia, I would term it, as you described, more quality of life and life expectancy, and we as nurses, how when a physician ordered a "No Code" how we felt about supporting or not supporting that.

Q. And did people then express their views on those occasions with respect to their support or lack of support for that type of an order?

A. Yes.

Q. And on occasions when they were discussed, did you express your own views with respect to that?

A. In response to the "No Code"?

Q. Yes.

A. Yes.

Q. What were those views?





BB.4

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2                   A.        I think that in most of the  
3 cases where a physician had ordered a "No Code" I  
4 could agree with them.

(2)

4

5                   Q.        Now on any occasion did you hear  
6 Phyllis Trayner express her views on that subject at  
7 these discussions?

7

8                   A.        I could have, but I don't  
9 remember.

9

10                  Q.        Liz Radojewski in her evidence  
11 told us about a conversation that she had had with  
12 you on one occasion that concerned your brother's  
13 philosophy regarding babies and the quality of their  
14 life. I think she indicated that his philosophy, as  
15 related by you, was that one - we are talking about  
16 sick babies on the cardiac ward, that one could not  
17 grieve or be sorry when the babies died because the  
18 quality of their life was going to be so poor in any  
19 event, that perhaps it was better that they died. My  
20 question to you is, firstly, do you recall that and  
21 agree with her account of the conversation she had  
22 had with you?

20

21                  A.        My recollection of that conver-  
22 sation was that it was in around the beginning of  
23 September, I had just returned from holidays and I  
24 was concerned that my brother and I were going to be

24

25





BB.5

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2 working together on the cardiology floor. In the  
3 past we had worked in an area where the head nurse  
4 that I was working under thought it was quite  
5 unethical that a brother and sister should work  
6 together.

7

Q. Was that in Vancouver?

8

A. That's right.

9

Q. Yes.

10 A. So I wanted to approach Liz and  
11 ask her if she had any misgivings about my brother and  
12 I working together, and she said "No".

13

12 I believe that we got into then a  
13 discussion of the deaths in July and August, and how  
14 glad I was that I had a break. I believe that in  
15 talking to her at that time I told her that my brother  
16 had tried to help me through those deaths that had  
17 occurred in July and August. I think he was helping  
18 me to try and feel better and to say that perhaps it  
19 was the best thing to look at the quality of life. As  
20 I say, I think it was his way of trying to help me  
accept that we had lost a number of sick children.

21

Q. And did you indicate to her at  
22 that time whether or not you shared that view of  
23 dealing with the deaths?

24

A. I don't know whether it was a

25





BB.6

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2 matter of agreeing or disagreeing, I think I was  
3 sharing with her one of the ways that had helped me  
4 to get through those deaths.

5 Q. Just while we are on that topic,  
6 I take it that you and your brother are very close?

7 A. I don't know whether I would  
8 say very close, we have our --

9 Q. Normal brother and sister  
10 relationship?

11 A. Yes, normal brother and sister  
12 relationship.

13 Q. But you and he both worked  
14 together at the hospital in Vancouver?

15 A. Right.

16 Q. And did you go out there after  
17 he had gone?

18 A. Yes, I did.

19 Q. Was that the reason why you  
20 went out there, to work with him?

21 A. No, it was not.

22 Q. Or did the opportunity to work  
23 there come up after he was there?

24 A. I believe he knew well in  
25 advance that he would be going there. I think that  
it was some time in late June that I actually accepted





BB.7

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2 the position at Vancouver General.

3 Q. So that was more of a coincidence  
4 than anything else?

5 A. Yes, it was.

6 Q. And then the same on your  
7 return to Toronto, the coincidence that the two of  
8 you worked at The Hospital for Sick Children?

9 A. I think that initially when my  
10 brother had, I don't know exactly how it works, but  
11 when they are finished their medical school they  
12 apply to certain areas and he had applied to Sick  
13 Children and somehow it got mixed up in the computer,  
14 or in the mail, and his request to go to Sick Kids  
15 never arrived, and so in terms of numbers he ended  
16 up having to go to Vancouver. So then it was his  
17 every intention to hopefully do part of his Paediatric  
18 residency at The Hospital for Sick Children.

19 Q. And your return to Toronto then  
20 and your securing a position there was in fact a  
21 coincidence in terms of his own desire to spend part  
22 of the time there?

23 A. Certainly, it was my personal  
24 decision.

25 Q. Well now, dealing with some of  
these children; I wanted to ask you one question about





BB.8

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2 the death of Lombardo now. You indicated that you  
3 thankfully took holidays in December from, I think  
4 it was the 19th through to, do you recall what day it  
5 was that you returned?

6

A. It was the 27th that I returned,  
I forget what day it was that I actually started my  
holidays.

7

Q. All right.

9

A. Some time, the 18th or the 19th.

10

Q. You indicated that during that  
period of time you were not at the Hospital at all  
from the time you left to the time you got back?

12

A. Right.

13

Q. Did you spend your holidays in  
Toronto, or were you out of the city?

15

A. No, I was in Belleville.

16

Q. You were in Belleville for that  
period of time?

18

A. Yes.

19

Q. Now my friend Mr. Lamek asked you  
about - I'm sorry, it was Mr. Sopinka who is also my  
friend.

21

MR. SOPINKA: I have not conceded that.

22

MR. HUNT: Q. He asked you about a  
phone call that you received in Belleville from

24

25





BB.9

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2 Liz Radojewski, concerning the death of Baby Pacsai  
3 and the possibility of an inquest into it. You  
4 explained that while you were upset at the phone call,  
5 or upset at Nurse Radojewski for having made the  
6 phone call to you, I think you said it could have  
7 waited, that she could have told you face to face as  
opposed to in a telephone conversation?

8

9 A. Yes. When I was not in Toronto  
10 and that she made a specific point of calling me while  
I was away.

11

12 Q. So you felt that that was some-  
13 thing where her reaction in terms of calling you was  
14 something that was a bit of an overreaction, she could  
have waited until you were back and deal with it in  
a normal business or professional way at the Hospital?

15

A. Yes.

16

17 Q. Well, what she really told you  
18 in that conversation I take it was that there was  
19 likely going to be a coroner's inquest, or certainly  
20 an investigation into the death of Baby Pacsai, and  
21 that it had been established by that time, which was  
mid-week I think, the week after Baby Pacsai died,  
22 that there was an extremely high level of digoxin in  
23 the baby, and it was either, you were either told it  
24 was a level of 29 nanograms or very high; you knew

25





BB.10

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2 that by the end of the phone call?

3 A. Yes.

4 Q. Now what I suggest to you is  
5 that really that was extremely important information  
6 for you to have?

7 A. It was fairly important.

8 Q. Because what she was saying to  
9 you was, look, for own purposes and protection you  
10 ought to sit down and write out your recollections of  
11 what happened that evening, because it looks like  
12 there is going to be an inquiry or an investigation  
13 into this and you are going to want to have some  
14 record of what happened?

15 A. Right.

16 Q. And I guess that it was even  
17 more critical for you to know that inasmuch as you  
18 on the medication record gave the last dose of  
19 digoxin that the baby had?

20 A. That's right.

21 Q. And now it appeared that he  
22 died with a tremendously high level of digoxin?

23 A. Yes.

24 Q. So my question really is, why  
25 on earth would you be upset with her for phoning you  
sort of immediately, to tell you to do something for





BB.11

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your own protection when it involves something so  
serious as a situation that prevailed?

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A. She was telling me something

very serious and she upset me and she scared me. I  
in fact did write the notes that were requested and  
do everything that she asked me. My feeling was that  
here I was not in Toronto and she was telling me that  
something that - she was telling me something without  
really offering me any support I think was the way  
I looked at it, and that by phoning me at home and  
telling me something she alarmed me and yet though  
she wasn't there for me to see what kind of reaction  
she had to it. By talking to me over the phone I  
felt that she was telling me something very important  
but it was to me something that she should have been  
telling me in person when she could help me to under-  
stand exactly what was going on. I think my main  
feeling was that I was isolated.

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Q. Well, did you sense that she was in any way accusing you in the manner in which she delivered the information to you or was taking an adversarial position to you at that time?

A. No, it was more that she presented the facts which alarmed me.

Q. They were pretty alarming facts.

A. They were.

Q. It would be hard to down-play them?

A. Right. I guess it interfered with my time away from the Hospital to one extent but not so much that, that there wasn't anything I could do because there wasn't anyone I could talk to or discuss what this actually meant.

Q. So, you were alarmed understandably by the information and you really needed to be there to see for yourself what the situation was, what was going on, what people were concerned about and saying.

A. Yes.

Q. All right. So, I suppose in fairness to her it really wasn't something that she, or was her fault, she was doing you a good





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turn really by alerting you at the earliest opportunity  
of the situation.

4

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6

7

A. Yes, except that she was told  
that she was to - it was my understanding that she  
was told to contact the nurse who had looked after  
Pacsai that night. She told me that when she phoned.

8

Q. All right, as opposed to you  
you mean?

9

A. Pardon me.

10

11

Q. I don't understand your  
comment.

12

13

14

15

16

17

A. When she initiated the  
conversation she said that she was informed, she  
was asked I believe by Dr. Fowler to get in touch  
with the nurses who had been involved with Pacsai  
and she said that there were some discussion about  
whether Miss Costello would phone me or she would  
phone me since the baby had been on 4B.

18

19

Q. All right. No question though  
that you were involved with Pacsai that night?

20

A. Right, no question.

21

Q. So that you were one person  
that had to be contacted about this?

22

A. Right.

23

Q. Well, in any event, you took

24

25





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her advice or suggestion and you made up your notes  
with respect to that?

4

A. Yes, I did.

5

6

Q. You made them up earlier than  
you would have had she waited for you to get back  
to the Hosiptal on the Friday, I think it was, or  
the following week.

7

8

A. But I was never asked for  
them by her.

9

10

Q. No, that's true. I suppose  
the purpose of those notes was to assist you in the  
event of an inquest or an inquiry?

11

12

A. Right.

13

14

Q. Now, with respect to the  
notes that you made at that time, I know we have  
been given the benefit of the notes you made for  
Mr. Cooper concerning Miller and Pacsai. The notes  
that you made that night, which would have been the  
earliest account that you had of Pacsai, did you  
keep those?

15

16

17

18

19

20

21

A. The notes that I made on

Mrs. Radojewski's advice?

22

Q. Yes.

23

A. Yes, I did.

24

Q. Are those the ones that we

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received?

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A. Yes, they are.

4

Q. Well, the ones that we received I thought had a reference on them to being made for Mr. Cooper.

5

A. I was told to put that at the top.

6

7

Q. Oh, that went on afterwards?

8

A. Yes.

9

Q. All right. And then there were comments that were made in the margin of some of those notes. Yes, there were comments that were made in the margin of some of those notes that you indicated were put on by someone else?

10

11

A. Yes, they were.

12

Q. All right. So that the notes that we have received, which are Exhibit 393, were made by you in Belleville.

13

14

15

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17

18

19

A. I'm not sure whether I had returned to Toronto yet or not.

20

21

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Q. All right. They are made

after the call from Liz Radojewski and certainly before the incidents of the weekend of the 21st/22nd when Babies Miller and Cook died.

A. Right.





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3 Q. And then they were made into  
notes for the purpose of legal advice afterwards  
4 by adding that at the top.

5

A. Right.

6

Q. All right.

7

A. And the writing that appears  
in the margin is not mine.

8

Q. All right, that belongs to  
9 one of your counsel I take it?

10

A. Right.

11

Q. Okay. Then obviously the  
12 notes that you made with respect to Miller and  
13 Cook were made after you were arrested on the 25th  
14 and after Mr. Cooper became involved?

15

A. Right.

16

Q. All right. Now, other than  
17 those notes dealing with Pacsai, Miller, and we  
have heard about notes that were made with respect  
18 to Baby Cook, did you make any notes about the  
19 events of any other evening when any of the other  
20 children that we are concerned with here died?

21

A. No, I did not.

22

Q. So, you made them with  
23 respect to Pacsai, Miller and Cook?

24

A. And I did not myself make

25





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notes on Estrella but there were notes that were  
made with Mr. Cooper and myself.

4

Q. I see.

5

6

A. And I think they appeared in  
the first person.

7

Q. I see, fine.

8

9

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A. And during the middle of the  
preliminary hearing when the similar fact evidence  
was submitted I believe I made a few notes on the  
children that were being introduced at that time  
but they were with the use of the chart.

Q. All right. But the critical  
ones from the point of view of assisting the  
Commissioner with an accurate recollection recorded  
at the time with respect to these deaths would be  
certainly Pacsai and Miller and Cook which were  
made, I think you said the first part of April?

A. Right.

Q. And Estrella was made at  
some point in time after that or at the same time?

A. The same time but I believe  
sort of what I was asked to do was make the notes  
and I got through Miller and Cook and then Mr. Cooper  
and I actually compiled the notes on Estrella  
together.





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Q. All right. Well, with respect to Baby Cook, after the Baby died, I know you have said that you assisted in retrieving some of the equipment, the IV bag and some of the tubing, et cetera from the garbage but what happened in the room immediately after the baby died? Was there a cleanup of some sort that went on?

A. It started, yes.

Q. As I understand it there are two aspects to cleaning up the room; one is getting the baby ready for the parents to view and the second one is cleaning up the room and putting it back in order.

A. Right.

Q. So, in terms of preparing the baby for the parents, who was responsible for that?

A. I was.

Q. And did you do that alone or did you have assistance?

A. I had assistance.

Q. Who helped you on that?

A. I believe it was Janet Brownless.

Q. And then in terms of the room





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3 itself, cleaning of the room, who was responsible  
for that?

4

5 A. It's my recollection that  
6 Dr. Jedeikin left the room after the arrest and  
7 went to the phone and called Dr. Fowler to notify  
8 him that the baby had died. It was my understanding  
9 that Dr. Fowler had given Dr. Jedeikin certain  
10 instructions because Dr. Jedeikin then came back to  
11 418 and asked that everything be left for the time  
12 being.

13

14 Q. All right. So, what instructions  
15 did you think he had been given or did you understand  
16 he had been given?

17

18 A. Well, I knew that he was asked  
19 to take some samples because I helped him to take  
20 those samples and that's all that I can remember.

21

22 Q. Any instruction then about  
23 leaving the room as it was?

24

25 A. I just think that he meant  
leaving the room as it was so that Dr. Jedeikin  
could obtain these samples.

21

22 Q. All right. Now, how long was  
23 Dr. Jedeikin gone from the room to make his phone  
24 call before he returned to take the samples?

25

A. I don't remember.





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3 Q. In the interim while he was  
4 gone then did someone begin to clean up the room?

5

6 A. I think that the cleanup  
7 started immediately after the child died.

8

9 Q. And who was involved in that?

10

11 A. I don't know, I imagine  
12 everyone. I recall that I went back to the desk  
13 because Dr. Jedeikin asked me to come and help him  
14 to recall the events before he had gotten there.

15

16 Q. This is for the purposes of  
17 his report to Dr. Fowler?

18

19 A. For his own notes.

20

21 Q. His own notes.

22

23 A. You will recall that he didn't  
24 arrive immediately, that Dr. Kantak arrived  
25 immediately.

26

27 Q. All right. And then when he  
28 returned to the room then after the phone call, did  
29 you say that at that point he indicated that he  
30 wanted the room left the way it was?

31

32 A. That's my recollection, yes.

33

34 Q. All right. Meaning that  
35 wherever the equipment was at that point in time  
36 it was to stay there and you interpreted that as  
37 meaning that was for the purposes of him taking

38





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samples?

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A. Right.

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Q. Did he take those samples  
immediately when he returned?

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A. I can't remember exactly but it seems to me that he went and he said leave everything as it is and after having spoken with Dr. Fowler and I believe I was still at the desk at this time because he came back and he asked me to review what had gone on and he was writing his physician's note. So that as soon as he hung up the phone from Dr. Fowler he went back to the room to tell them to just wait a minute and then he went to write his note and when he had finished doing that then he went back to the room to obtain the samples.

Q. Did you go back with him to the room?

A. Yes.

Q. He obtained the samples and then is it at that point that you began preparing the baby for the parents?

A. Yes.

Q. All right. And your understanding is that prior to him going back to the room





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with you after talking to Dr. Fowler some aspects  
of the cleanup of the room had already taken place?

3

4 A. That's right because we hadn't  
5 received any instructions to the contrary before  
6 that.

7

8 Q. All right. And his instruction  
at that time was leave everything the way it is?

9

A. Right.

10

11 Q. And then you indicated that  
you assisted in retrieving some of the equipment  
from the garbage?

12

13 A. The intravenous bags and  
whatnot had already been thrown in the garbage, so,  
14 I retrieved them from the garbage so that he could  
15 obtain the samples he wanted.

16

17 Q. And what garbage was this that  
you retrieved them from?

18

A. The garbage from the room.

19

Q. In the room. Would this be  
just the can with the plastic bag in it?

20

A. Right, at the sink, yes.

21

Q. And into that was put, what,  
the IV bag?

22

A. And all the buretrol and  
tubing.

23

24

25





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Q. Needle and everything?

3

A. Well, the needle might have  
been taken off, I don't know.

4

Q. And where was that put then?

5

A. Where did I put it?

6

Q. Where did you put it after  
you retrieved it?

7

A. I put it back into the garbage  
after he had taken the sample that he wanted.

8

Q. Oh, I see. So, he took his  
sample out of the bag and it went back in the same  
garbage can that it would have been in before?

9

A. Right.

10

THE COMMISSIONER: These buretrols  
and IV bags are they not reusable?

11

THE WITNESS: No, they are not.

12

THE COMMISSIONER: What happens,  
why are they not? I know nothing about this, as you  
no doubt have discovered from that idiot question.

13

THE WITNESS: No, it is just that  
they would be contaminated. I mean, they should  
be fairly sterile and kept as clean as possible and  
that you wouldn't be able to use the same setup on  
the same patient. And also even for the same patient  
there is the chance of contamination or of it picking

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3 up things, unwanted germs sort of thing. So, they  
4 need to be changed quite often but certainly they  
5 are not reusable.

6

7 THE COMMISSIONER: You do refill  
8 them though from time to time?

9

10 THE WITNESS: The buretrol is  
11 refilled because the bag is changed, the bag can  
12 actually be changed.

13

14 THE COMMISSIONER: Yes.

15

16 MR. HUNT: Q. All right. Well,  
17 you took a sample from the bag; was there any other  
18 samples taken from the items you received?

19

20 A. I believe there was more than  
21 one.

22

23 Q. All right. What about samples  
24 of the tubing or the bag itself, was there any of  
25 those taken?

17

18 A. It was my recollection that  
19 he took the samples from the IV bags.

20

21 Q. And then the material went  
22 back into the garbage where it had been to begin  
23 with?

24

25 A. Yes.

26

27 Q. And at the same time or about  
28 the same time he took the samples of blood from  
29 Baby Cook?

30

31 A. Right.





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2 Q. And what happened after that.

3

Did the clean-up then continue in both cases?

4

A. Right.

5

Q. And the baby was prepared and  
removed from the room for the parents?

6

A. Yes.

7

Q. And the room itself then was  
cleaned?

9

A. Right.

10

Q. When he said that everything  
was to be left untouched when he went back to the  
room you interpreted that to mean while he took the  
samples or got the samples. Was there any indication  
from anyone after that point in time that the way  
in which the room was ought to be left, in other  
words leave the material in the garbage, leave the  
other items as they were?

17

A. I am not sure what you meant.

18

My understanding was that as is the normal routine  
after an arrest, the room is a mess, so a clean-up  
operation just automatically starts to take place.

20

It is my recollection that Dr. Jedeikin went, made  
a phone call and then as soon as he finished that  
phone call he went back to the room and said hold  
everything, leave everything the way it is right now.

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So the clean-up operation had begun and that is why  
the bags and what not were already in the garbage  
and he said, just leave things as they are. I  
thought that he wanted to take these samples but he  
did not have time to do it right at that moment,  
that it was more important to him that he go out to  
the desk and write his notes before he took these  
samples.

9

Q. I understand that, but after  
the samples were all taken then as far as his  
instructions went the room could be cleaned?

12

A. Right.

13

Q. In your notes that we have not  
seen about Cook, did you record anything back at the  
time about this incident after the deaths, the taking  
of samples from Justin Cook, the reaction of Mrs.  
Trayner, the taking of samples by Dr. Jedeikin from  
the material that you retrieved from the garbage?

18

A. I had written that, yes, not about  
Mrs. Trayner but about Dr. Jedeikin and taking the  
samples.

20

Q. Do you remember the incident  
that we have already discussed concerning Mrs.  
Trayner's reaction to him taking samples from the  
baby independently, but you have notes on the other

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2 material?

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A. Right.

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MR. HUNT: I don't know what position  
we are exactly in on this. It would be I suppose  
of interest to know if the notes contained any other  
information about this, but I am not going to press  
the matter at this point if there has been some other  
resolution to it worked out. I thought at one point  
someone was going to read from the notes during my  
friend's re-examination.

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MR. SOPINKA: I agreed to do that with  
respect to Mr. Strathy's question, but I have no  
objection to my friend asking Miss Nelles to look  
over her notes and say whether there is anything  
she has not said on that subject in the notes and  
if there is, to read it, but I am doing that without  
prejudice to the noises that I hear back here saying  
that I have now waived any privilege.

THE COMMISSIONER: Is that satisfactory  
to you?

MR. HUNT: Second best.

THE COMMISSIONER: No, no. You can  
press for the best but if second best is satisfactory  
to you we will settle for that.

MR. HUNT: I am being guided by your





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(Hunt)

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2 ruling a long time ago.

3 THE COMMISSIONER: I don't know that I  
4 made a ruling.

5 MR. HUNT: You did actually with Nurse  
6 Brown and she had refreshed her memory from the  
statement and I suggested that allowed me to see it.

8 THE COMMISSIONER: At least I agree  
9 with you, if she has refreshed her memory from a  
document, and I am not sure that she has. Has she?

10 MR. HUNT: I have not explored that  
11 exactly. I can. But the problem at that time was  
12 I think your ruling was even though Nurse Brown  
13 had refreshed her memory from it that that was not  
14 enough to let me see it and it was only after a  
15 number of repeated references were made to the  
statement that you decided to have it distributed.

16 THE COMMISSIONER: No, that was not  
17 quite it. Some time ago I made a ruling, I have  
18 made so many of them recently that I may have to  
19 get them indexed and put in a book, but one of them  
20 was with respect to the statements that were made  
21 to the police. The police had put them all down.  
22 They were the ones. I got a little worried that  
23 too many people had copies of those and too many  
people kept referring to them and it then became

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2 unfair for all counsel not to have them. This is  
3 quite different. These are notes which she made  
4 herself. If she has referred to them in order to  
5 refresh her memory I think the usual rule is that  
6 counsel who are cross-examining have a right to look  
7 at them. They don't become evidence at all but you  
have the right to look at them.

8 Now Mr. Sopinka has suggested that you  
9 might be agreeable, instead of looking at them,  
10 because there apparently is something in there that  
11 will affect Phase II. I think this is the main  
12 reason, you might be content to ask Miss Nelles to  
13 read it and see if there is anything else, and I  
14 think he adds to that his own undertaking that if  
he finds that there is indeed he will review it.  
15 Are you satisfied with that?

16 MR. HUNT: I was operating under a  
17 misapprehension as to what the rule was. If I could  
18 just ask her if she has refreshed her memory from  
19 them then I might apply to actually look at them  
myself.

20 THE COMMISSIONER: All right.

21 MR. HUNT: Q. You have heard all that.  
22 The point is did you use these notes with respect  
23 to Cook, read them over in preparation for testifying

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2 here to refresh your memory as to the events?

3 A. Yes, I did.

4 Q. Did you do that recently or  
5 when was the last time that you did it?

6 A. I think the last time I read  
7 them was maybe Thursday or Friday of last week.

8 Q. Was that in preparation for  
9 the interviewing that was going on last week of  
yourself?

10 A. Yes.

11 THE COMMISSIONER: I take it all you  
12 want to do is take a look at it.

13 MR. HUNT: I would like to take a  
look at it.

14 THE COMMISSIONER: Do you have any  
15 objection to that, Mr. Sopinka?

16 MR. SOPINKA: I think we have been  
17 fairly liberal in producing them. The relevant  
18 refreshing is in the witness box. The witness  
19 refreshes her memory in the witness box. If the  
20 witness refreshes her memory in the witness box then  
there may be a different rule.

21 THE COMMISSIONER: If they had been  
22 used for that purpose I think it would be reasonable  
23 for him to look at them if he wants to, but I can

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2 see there may be certain things in these notes that  
3 might be for some reason privileged or might not be  
4 relevant or something like that.

5 MR. SOPINKA: I submit the whole  
6 notes are privileged. The only reason they are  
7 getting them is because I am co-operating.

8 THE COMMISSIONER: They are not being  
9 produced as evidence; they are not being tendered  
10 and are not going to anyone except to Mr. Hunt to  
11 look at. That is all.

12 MR. SOPINKA: Frankly, these notes  
13 also contain matters that relate to Phase II and if  
14 I had your assurance that they are not going to  
15 be distributed far and wide --

16 THE COMMISSIONER: They are not  
17 going to be distributed to anyone at the moment  
18 except Mr. Hunt and they are not even going to be  
19 distributed to him. He can look at them.

20 MR. SOPINKA: I am content for him  
21 to look at them. He is fairly reliable.

22 THE COMMISSIONER: Would it be  
23 convenient to look at them over the break?

24 MR. HUNT: Yes.

25 MR. TOBIAS: If I might just raise  
26 one point.





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2 MR. SOPINKA: I knew it was coming.

3

4 MR. TOBIAS: I am happy that I don't  
disappoint you, Mr. Sopinka.

5

6 If your ruling as I understand it is  
7 that they are not being put in as evidence but they  
8 are to be used by counsel as an aid to cross-  
9 examination because she has used them to refresh  
10 her memory, then I don't understand how you can  
11 allow Mr. Hunt to examine the notes without giving  
12 all other counsel that same privilege.

13

14 MR. HUNT: Because I am cross-  
15 examining.

16

17 MR. TOBIAS: As a practical matter  
18 then each one of us in turn when we get up to cross-  
19 examine will say that we want to see the notes and  
20 all that will accomplish is a lengthy delay as each  
21 one of us in turn stands up in the middle of our  
22 cross-examination to read the notes.

23

24 MR. PERCIVAL: Mr. Commissioner, if it  
25 will help you that is of course what I intend to do.  
I am going to ask for them. It was up until yesterday  
that we saw any notes of this witness and I am  
delighted to see that there is something here.

26

27 THE COMMISSIONER: Is there some  
28 possibility that we could exclude the Phase II

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2 aspects of it. Perhaps we could put it between you  
3 and Mr. Lamek to sort it out. Do you have a  
4 solution to this problem, Mr. Lamek?

5 MR. LAMEK: I may have, Mr. Commissioner.  
6 The notes were provided to me, I should explain,  
7 on the understanding which I had from Mr. Brown  
8 that they could be distributed to counsel if  
9 necessary and that being so I am a bit puzzled that  
10 Mr. Sopinka is now asserting some privilege in  
11 respect to them. But in expectation that the question  
12 of their distribution might arise I made an attempt  
13 to delete from them those matters which go to Phase  
14 II and maybe over the course of the break Mr.  
15 Sopinka and I can agree as to the proper contents  
16 going to Phase I only.

17 THE COMMISSIONER: What we will do  
18 then is over the break - I take it you have copies?

19 MR. LAMEK: Yes.

20 THE COMMISSIONER: You can go to the  
21 original, take a look at them, Mr. Hunt, whereas  
22 Mr. Sopinka and Mr. Lamek will decide whether they  
23 can agree on what is to be distributed.

24 Now, Mr. Percival, are you going to  
25 be happy with that?

26 MR. PERCIVAL: Mr. Commissioner, we





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10                   2 worked out something on another occasion with Mr.  
                  3 Lamek's volunteering. I am quite content under the  
                  4 circumstances that I not be permitted to see any  
                  5 of these notes that relate clearly, in Mr. Lamek's  
                  6 judgment, to Phase II. I think that is quite  
                  7 proper because I don't intend to go into aspects  
                  8 of Phase II at this stage in any event.

9

THE COMMISSIONER: I think everybody  
will have to be content with that.

10

11

MR. PERCIVAL: We did that before, if  
you will remember, with the police reports.

12

13

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THE COMMISSIONER: All right. I will  
leave it in your hands and in Mr. Sopinka's, Mr.  
Lamek, and while you are working I will have a cup  
of coffee.

15

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---Short recess.

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DM.  
JC  
EE-1

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--- On resuming:

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THE COMMISSIONER: Yes, Mr. Hunt.

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MR. SOPINKA: Well, in my usual spirit of co-operation everybody now has the statement.

6

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THE COMMISSIONER: I hope that everybody is metaphorical, it is not going to appear on the front pages of the Globe and Mail like that tomorrow.

9

10

MR. HUNT: It may very well be knowing counsel.

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MR. PERCIVAL: Mr. Commissioner, that was because I threatened Mr. Sopinka with quoting the leading authority on Evidence called Sopinka and Lederman, that was directly against him.

15

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MR. SOPINKA: I don't mind whether it is against me or for me as long as I sell more books. I am sorry now that I gave my friend the statement.

18

19

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THE COMMISSIONER: Well now, with the document before you I even got a document I can tell you, also, the same document I think came to me, when they decided everybody else could see it, they, as an afterthought, decided to give me a copy, too.

22

MR. HUNT: I think I got it as an afterthought too.

23

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MR. HUNT: Q. Just to deal with the





EE-2

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Cook matter and your recollection of it here. The notes as I see them at page 215 don't have any account of the cleaning up of the room, or any materials that were retrieved from the trash and later put back, is that fair?

3

A. I don't have one.

4

Q. Well, in keeping with usual organization here.

5

MR. SOPINKA: When I said everybody --

6

MR. HUNT: Q. It is about half way down page 215.

7

A. 215.

8

Q. That is on mine in the upper right-hand corner.

9

A. Well --

10

Q. Please, I hope you have 215 or we are really in trouble.

11

A. Well, okay. I think that I have to explain that that is not my writing, that as I say these notes were prepared together with Mr. Cooper and I was responding partially to questions that he asked as well as to my recollection, so that I didn't write down everything that I remember happening.

12

Q. Fair enough.

13

A. I was sort of told to write down

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EE.3

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2 the events of the evening.

3 Q. Let me just go back a step then  
4 because I might have misunderstood you before the  
5 break. I thought the notes that you did that were  
6 not prepared solely by you were - related only to  
7 Baby Estrella; was I wrong in that interpretation?

8 A. Well, as you will see the notes  
9 in the latter part are not my writing.

10 Q. The writing changes.

11 A. So I sat down and started to  
12 write what I remembered, and then I was joined by  
13 Mr. Cooper. Like he sort of told me, start to write  
14 down what you remember, and then he came in later and  
15 took up where I had stopped, or from where I had  
16 gotten to at that point.

17 Q. With you dictating, as it were,  
18 or giving him your account?

19 A. Right.

20 Q. And the portion on page 215  
21 then that I referred to is in Mr. Cooper's handwriting,  
22 and it is his notation of what you were telling him  
23 about the events after Baby Cook died?

24 A. And some of - answers to some  
25 of his questions.

Q. Your answers to his questions?





EE.4

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A. Yes.

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Q. And what you are pointing out is that with respect to the incidents after Baby Cook died and the retrieving of material from the trash that you didn't - he didn't record all of your recollections on that?

A. Right.

Q. On those events?

A. Right.

Q. The one he recorded apparently deals with the taking of the blood sample and samples from the intravenous bags because of the investigation. He didn't set out in any detail your recollections with respect to what happened in the room?

A. Right.

Q. So that just to sort of summarize it; the notes that we have relating to Pacsai are all yours except for the notations in the margin?

A. Right.

Q. Because they are the first ones you prepared?

A. Right.

Q. The notes with respect to Miller, Cook will be notes that you prepared while you were sitting down with your counsel getting ready?





EE.5

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A. Right.

3

Q. They are --

4

A. Most, I think in the case of  
Miller they are in most of my writing with writing  
in the margin; and that with Cook it is only half as  
you can see my writing; and with Pacsai I seem to  
recall that it was almost all my writing with just  
writing in the margins.

9

Q. Let's move ahead. I wanted to  
ask you about some of the comments that are attributed  
to you that Mr. Sopinka dealt with you with on Monday  
morning.

13

THE COMMISSIONER: Could I interrupt  
this just for a moment? Just for convenience if you  
do take the approach that this document can be an  
exhibit it would be easier for us, but you don't have  
to.

17

MR. SOPINKA: It can become an exhibit,  
I have no objection.

19

THE COMMISSIONER: Well, all right,  
let's make it an exhibit then. It will be Exhibit 394.

21 --- EXHIBIT NO. 394: Handwritten notes  
re Justin Cook.

22

23

MR. SOPINKA: I just gave to

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EE.6

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Miss Nelles a copy out of my brief and I am going to  
give her the one that everybody else has.

4

5

MR. HUNT: Q. The first one I would  
like to deal with is the comment that is attributed  
to you after the death of Baby Pacsai.

6

7

A. Right.

8

Q. You will recall that one. Now,  
I am referring to Exhibit 32C which is part of the  
documents put in at the preliminary hearing, and it  
is Tab A in that volume, do you have that?

10

A. What is the exhibit number?

12

Q. 32C, Tab A.

13

A. Tab A?

14

Q. Yes, there should be three of  
those.

15

A. I have 32C, Volume 3.

16

Q. Is there a Tab A at the back,  
near the very back?

18

A. Oh yes, I am sorry.

19

Q. Now, that is a one-page document  
dated January the 7th of 1982, and it is signed by  
Phyllis Trayner. It purports to be a statement  
attributed to you, made by her in the presence of  
Sergeant Warr, Jerome Wiley and R. McGee re Pacsai.  
This is the account that on January the 7th of 1982

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EE.7

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2 that Mrs. Trayner gave to one of the investigating  
3 officers and the two Crown Attorneys; saying that  
4 when Baby Pacsai died Sue said and then in quotes:

5 "I am relieved Pacsai died because  
6 now doctors would listen to her ... ",  
7 that is you:

11

Signed "Phyllis Trayner".

12

13 Now I think your evidence was that  
14 you didn't recall the exact words that you used. I  
15 put to you the written account on January the 7th of  
16 1982 that Phyllis Trayner gave when being interviewed.  
17 I appreciate that you have now given your explanation  
18 of the circumstances in which you made your comment  
19 and the context. Would you agree with me that  
20 standing --

19

20 MR. SOPINKA: Wait a second. I don't  
21 think my friend - there is no proof that Phyllis  
22 Trayner made that statement and there is proof to the  
23 contrary. We have not heard from Mr. McGee, and his  
24 evidence as to how he supports that statement in light  
25 of what Mrs. Trayner said at her preliminary hearing





EE.8

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2 which is quite different. That statement indicates  
3 that Susan Nelles said she was relieved that Pacsai  
4 died. Whereas in giving her sworn testimony this  
5 is what Phyllis Trayner said at the preliminary  
6 hearing, and this is in Volume 5 at page 971.

7

8 MR. HUNT: If I could just interrupt  
9 my friend before he gets a full head of steam up. The  
question I put to the witness was very particular. I  
said:

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"On January the 7th of 1982 this is  
the statement that Phyllis Trayner  
signed and it is her signature at the  
bottom giving an account of a comment  
allegedly made by this witness."

Now, I haven't got into this question.

THE COMMISSIONER: That is not a  
question at the moment, it is the statement.

MR. HUNT: That is the statement and  
that is what I prefaced it by: "On January the 7th of  
1982 this is the account she gave ... ", that is  
Mrs. Trayner gave to the investigating officer and  
Crown Attorneys.

THE COMMISSIONER: Yes.

MR. HUNT: And I haven't dealt with the  
application to cross-examine Mrs. Trayner at the





EE.9

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2 preliminary hearing or anything else.

3 THE COMMISSIONER: No.

4 MR. HUNT: My question is not one that  
5 is designed to attribute to this witness the statement  
6 that she has already explained.

7 THE COMMISSIONER: Yes. All right.

8 MR. HUNT: And my friend, I think he  
is --

9 THE COMMISSIONER: I guess we will  
10 wait and see what his question is before - just don't  
11 answer the question until after. Let's have Mr. Hunt,  
12 obviously it won't be relevant if he is not going to  
13 ask her to confirm or deny this statement, it won't  
14 make any difference what she did say in the Inquiry.

15 MR. STRATHY: I don't know what the  
16 purpose in putting the statement to this witness is?

17 THE COMMISSIONER: Give him a chance,  
18 we will give him a chance and let us see what he says,  
19 for another couple of minutes and Miss Nelles has  
20 promised not to answer the question for the moment.  
All right.

21 MR. STRATHY: All right, let's hear  
22 the question.

23 THE COMMISSIONER: All right, go ahead.

24 MR. HUNT: I am glad Mr. Strathy has

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EE.10

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2 agreed to hear the question.

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4 Q. All right. Now, all that having  
5 been said, I preface my remarks by saying January  
6 the 7th of 1982, this is the account of a comment  
7 attributed to you, signed by Phyllis Trayner on that  
8 date.

9

10 Now you have indicated that you don't  
11 recall the exact words, you have given your account  
12 of the context in which you made the statement,  
13 et cetera, and that I think you have said that you  
14 were not relieved that the baby had died, because  
15 you were relieved that as a result of all the  
16 circumstances there would be an investigation into  
17 the matter. Is that fair?

18

19 THE COMMISSIONER: I am not sure if  
20 that was at the same time. I thought that was some-  
21 thing she said, she was relieved when the investigation  
22 took place and that was in March.

23

24 MR. HUNT: No, what I am suggesting to  
25 Miss Nelles is that rather than this, what we have  
in front of us here, a statement, I am relieved Pacsai  
died; your comment is, well, you can't recall the  
exact words, was to the effect that you were relieved  
that the result of this whole incident was going to  
be that there was going to be an investigation into





EE.11

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2 the circumstances that would get to the bottom of it.

3 MR. STRATHY: Well, maybe what my  
4 friend can do is put to the witness also Mrs. Trayner's  
5 evidence in chief at the preliminary, where she  
6 explained that statement that my friend has in very  
7 precisely the same terms the witness has used before  
this Commission.

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relief or whatever you want to do and we'll get  
there.

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MR. HUNT: I will try it that way.

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Q. Please, I want you to listen  
to me, you look suspicious.

7

A. No.

8

Q. I'm not trying to misstate  
what you have told us. Am I correct that your  
recollection of this comment that has been attributed  
to you is not as we have just seen, a comment that  
you were relieved that Pacsai died, but rather,  
you were relieved at the fact that there was going  
to be an investigation into the cause of death that  
would get to the bottom of the question of why he  
did.

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16

A. I don't think that is exactly  
it.

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Q. All right. You help me with  
what it is.

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A. I think that I was trying to  
say that I was not relieved, as you put to me, that  
the baby died. In fact, I was relieved that now  
maybe it could be seen that what I had been trying  
to say during that night and trying to express to  
the physicians that this baby was ill and that he





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was exhibiting signs of not being well and in fact the physician had gone home that I felt should be listening and that I felt that now at least this would be made known, that here was a nurse who had said that from every observation she had this child was not well and that obviously the doctor didn't believe that because he went home.

Q. All right.

A. But the evidence here showed that in fact he hadn't been well and he did need attention.

Q. And your relief was at the fact that the was going to become known?

A. Known.

Q. All right. All I want to say is Mrs. Trayner can come here and explain why her name is on that piece of paper and anything else she wants to explain about it, but what I'm saying is that that is very different than what we just looked at, the statement attributed to you "I'm relieved that Baby Pacsai died".

A. That is not my wording or that is not at least what I meant by that statement.

Q. All right. You wouldn't want to be associated with that statement "I'm relieved





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that Baby Pacsai died".

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A. In that straight wording, no,  
4 I would not.

5

Q. All right.

6

MR. STRATHY: I wonder now,  
7 Mr. Commissioner, to complete the story whether I  
8 could read to the witness just while we are on this  
9 subject the way Mrs. Trayner explained that statement  
10 at the preliminary hearing and ask if it accords  
11 with what her statement was at the time, that is,  
12 Miss Nelles' statement.

13

MR. HUNT: There are pages and pages  
14 of cross-examination by the Crown of its own witness  
15 on this statement at the preliminary hearing and  
16 if my friend wants to read it all, I mean, we are  
17 into a bit of a contest here.

18

THE COMMISSIONER: I think the  
best thing I can do is wait until - you want to do  
it right away, is that it?

19

MR. STRATHY: There is one sentence  
20 and I would simply like to put the one sentence to  
21 the witness and ask whether that accurately expresses  
22 the sentence.

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MR. HUNT: My friend knows full  
well there is much more than one sentence behind

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3 Mrs. Trayner's position that was taken at the  
4 preliminary hearing and to select one sentence out  
5 to say that that is what her position was is very  
misleading.

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7 THE COMMISSIONER: I am allowing  
8 him to interrupt your cross-examination to put that  
9 one sentence and then of course you have the right  
10 to go right ahead and put anything else you want  
11 and that's the only way I can do it.

10

11 MR. HUNT: I promise you I won't  
12 read into the record the pages that go to the  
13 explanation of it.

14

15 THE COMMISSIONER: All right.  
16 Well, you can change your mind between now and  
17 tomorrow and if you want to you may. All right,  
18 we will just interrupt it for that one question.

19

20 MR. HUNT: I will save it for my  
21 friend's client.

22

23 THE COMMISSIONER: All right,  
24 go ahead, Mr. Strathy.

25

26 MR. STRATHY: Page 970 of the same  
27 volume, Volume 5:

28

29 "I can't remember the exact words.  
30 The word 'relieved' did come in.  
31 I took it to mean when Susan had  
32

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"said it at that time in the conference room was that she was relieved that now maybe the doctors would listen to her, especially that night, and hopefully that another tragedy like this would not occur."

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Miss Nelles, does that basically set out the sentiments that you expressed that night?

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THE WITNESS: That's right.

11

MR. STRATHY: Thank you. Thank you, sir.

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THE COMMISSIONER: All right now,

Mr. Hunt.

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MR. HUNT: I will save it all for

Mrs. Trayner.

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Q. The point here is that statement we looked at signed by her is not something you want to be associated with?

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A. Not in the wording that

was put in, no.

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Q. All right. If you heard a nurse make a comment like that "I'm relieved that this baby died because now we'll get an inquiry into it", you would take that as a very callous,





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3 horribly callous statement by that particular person,  
would you not?

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5 MR. SOPINKA: Well, I submit my  
6 friend is getting into Phase II. I don't see how  
7 that is relevant to this Phase. What he is  
8 suggesting is, the police had this statement and  
9 they rushed off and charged Susan Nelles because  
we have a callous nurse here.

9

10 MR. STRATHY: This statement was  
made at the preliminary hearing.

11

12 THE COMMISSIONER: Well, that wasn't  
the way I took it. I didn't take it as going to  
13 Phase II. But at any rate, there you are. Now,  
14 can we leave this matter?

15

16 MR. HUNT: It is probably going to  
get worse.

17

18 THE COMMISSIONER: All right.

19

20 MR. HUNT: No, I submit it is  
a perfectly appropriate question. I mean, we have  
a confrontation obviously over what was said and  
who said it and what was signed by somebody else.

21

22 THE COMMISSIONER: Well, no, I  
think it is clear from Miss Nelles just what her  
evidence is as to what she said and what she thought  
23 at the time. But I don't see anything in the Trayner

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3 statement that has anything to do with the investi-  
4 gations, it has only to do with doctors listening  
5 to nurses when nurses tell them that babies are  
6 sick and that to me has nothing to do whatsoever  
with Phase II.

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statement that has anything to do with the investi-  
gations, it has only to do with doctors listening  
to nurses when nurses tell them that babies are  
sick and that to me has nothing to do whatsoever  
with Phase II.

MR. STRATHY: Mr. Commissioner,  
the statement that my friend puts to Miss Nelles  
is a statement made by Mrs. Trayner on January 7,  
1982.

THE COMMISSIONER: That's right.

MR. STRATHY: Nine months after  
the charges were laid.

THE COMMISSIONER: Yes.

MR. STRATHY: So, if it's not  
Phase II I don't know what it is.

THE COMMISSIONER: Well, no, no,  
he is not putting it to her for that purpose. At  
least, he may be putting it partly for that purpose  
but it also has some relevance to --

MR. STRATHY: He is putting it  
to try and justify the conduct of his client.

THE COMMISSIONER: Well, he can  
do that in Phase II. I refuse to accept it for  
that purpose. I'm accepting it only for the fact  
that the reaction that Miss Nelles had upon the





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death of Kevin Pacsai.

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4 MR. SOPINKA: Well then he can't  
do that without giving the - that's our point.

5

He can't suggest to her that that was her reaction --

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MR. HUNT: I didn't.

7

MR. SOPINKA: -- and he's not doing  
that.

8

9 THE COMMISSIONER: But he told us  
what her reaction was and that's the evidence I've  
10 got.

11

12 MR. SOPINKA: Well then that's the  
end of the matter for Phase I. Now he's saying  
13 but if you had that statement and you heard a  
14 nurse say that wouldn't you think that was a  
15 callous remark. That can only be relevant to  
16 justify what the police did.

17

18 THE COMMISSIONER: Well, I haven't  
heard him say that.

19

20 MR. HUNT: I will explain it to  
my friend.

21

22 THE COMMISSIONER: Yes.

23

24 MR. HUNT: Let's say that somebody  
attributes a comment like that to another person,  
25 to Miss Nelles, the comment "I'm relieved that a  
baby died" is, as we are just about to get into I





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suggest, a very callous, very distressing comment. Somebody is suggesting that and that's not true then the motives of the other person for suggesting that at any point in time may well bear on the question of whether or not the person to whom it has been attributed was responsible for something in connection with that. That's the purpose. To my submission, that goes to by how and what means the baby died, just as does much of the other evidence that we have heard about Mrs. Trayner's behaviour after the point in time when Miss Nelles was charged.

THE COMMISSIONER: Well, I will concede that the behaviour might well be - but what more questions have you got with respect to this particular statement.

MR. HUNT: This particular one?

THE COMMISSIONER: Yes.

MR. HUNT: Well, actually, if I got of Miss Nelles her reaction to this very callous comment that she doesn't want to be associated with, then I am just about done that area.

THE COMMISSIONER: I'm not sure that I accept your proposition it is quite as callous as you say.





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FF11  
MR. HUNT: I was going to ask that  
3 though.

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THE COMMISSIONER: As you say it is.  
5 Because in the Trayner - there is the explanation  
6 of why she is relieved. Relieved may not have been  
7 a very good choice of an adjective in this case.

8 MR. HUNT: Mrs. Trayner may explain  
9 it however she wants. What she's got to explain is  
10 why on a particular day she puts her name to a  
11 document that says, that attributes to Miss Nelles  
12 a very damaging comment and that is the behaviour  
13 that we will have to deal with.

14 THE COMMISSIONER: Well, we will  
15 come to the argument whether it is damaging or not  
16 because I am not overwhelmed by the damage.

17 MR. HUNT: Well, that's the very  
18 reason why I wanted to ask Miss Nelles, she's the  
19 one who would be in the best position to know how  
20 damaging to a nurse who was responsible for the  
21 care of Baby Pacsai a remark like this is that  
22 she was relieved that the baby had died, a baby  
23 with an anatomically normal heart who had come in  
24 from another hospital, someone has attributed to  
25 her a remark that she was relieved when that baby  
died which, in my submission I was going to get





Nelles, cr.ex.  
(Hunt)

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2 into this, was callous.

3 THE COMMISSIONER: But that isn't  
4 all she said. She said other things. She said  
5 why she was relieved and she was relieved because  
6 now the doctors would pay some attention to the  
nurses.

7

8 MR. HUNT: That's right.

9 THE COMMISSIONER: And I don't know  
10 whether that is a sentiment that is particularly  
11 admirable or not but it is not just being relieved  
at the death of a baby.

12

13 MR. HUNT: I agree. I agree it  
14 goes on to say that the reason for the relief -  
15 the point that is left though that I wanted to ask  
16 Miss Nelles about that is attributed to her was the  
17 remark that she was relieved that a baby died,  
18 relieved that the baby died; in other words, I'm  
19 glad that this baby died because now something else  
20 will be done. Miss Nelles has been very clear  
21 that that's not what she suggested or remarked or  
22 a remark that she was making or intended to convey.

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MR. STRATHY: No, Mr. Commissioner.

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3 The one thing that strikes me as grossly unfair  
4 about what my friend is trying to do is that he is  
5 only putting half the story to you. In Mrs.  
6 Trayner's evidence at the preliminary, she said that  
7 she told Sgt. Warr and Mr. Wiley the whole story;  
8 in other words, the explanation for that statement.

9 We all know about police officers  
10 and Crown attorneys taking statements and the select-  
11 iveness of the way that the statements are written up.

12 MR. HUNT: That is an interesting  
13 comment.

14 MR. STRATHY: We all know that.

15 THE COMMISSIONER: I don't think  
16 you need to go quite that far.

17 MR. SOPINKA: I am going to call  
18 Mr. Strathy in Phase II.

19 MR. STRATHY: In my submission, it  
20 is grossly unfair of my friend to put only half the  
21 story to the witness and ask you to draw any con-  
22 clusions.

23 THE COMMISSIONER: I cannot help  
24 but think you are making an awful lot out of what is  
25 a remarkably small matter. You have had the opportu-  
nity, and if there is one thing that is certain, Miss





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GG2 2 Nelles has had full opportunity to say how she did  
3 feel on the death of Kevin Pacsai; so that at least  
4 is out. We still have not been able to take you off  
5 this, have we?

6

MR. HUNT: The last thing I wanted  
6 to do -- I see you are having trouble with it, which  
7 makes it more important for me to do it.

8

This statement that we have here,  
9 it is a callous one, a very damaging one.

10

THE COMMISSIONER: That is a question  
11 of argument. If you are asking whether Miss Nelles  
12 agrees or disagrees as to whether it is callous or  
not, I really, with respect to her, I don't care. I  
13 don't care whether she thinks it is or not. It is  
14 whether I do.

15

MR. HUNT: Would it not help you  
16 to know what the person felt that it was attributed to?

17

THE COMMISSIONER: Not a great deal.  
Sorry about that.

18

MR. HUNT: Don't be sorry.

19

THE COMMISSIONER: No. It was not  
20 made in her presence; she was not there. There is no  
21 reaction she had to take to it. It did not affect  
22 her. It took place in 1982, some ten months after the  
23 time that we are concerned with.

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MR. HUNT: It did not affect who?

3

Miss Nelles?

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THE COMMISSIONER: It could not affect anybody. It was made in January of 1982, and the last baby died in March of 1981. It is the cause of death we are investigating.

7

MR. HUNT: It may well have an effect on her in terms of some conclusion that might be reached by you as to how and by what means the babies died in terms of who may have attributed this comment to her, which she clearly indicates she did not make.

12

In my submission, it is relevant but I can take a subtle hint.

14

THE COMMISSIONER: Please.

15

MR. SOPINKA: You must have a better one than that, though.

17

MR. HUNT: Q. I guess I did want to move on to the comments that really have been attributed to you by Mrs. Cook with respect to preparing for the worst, if you will recall that incident. My friend again felt that was significant enough to deal with in chief with you and, to refresh your memory, it is my note that Mrs. Cook indicated that on the Saturday night before Justin died - we

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don't know the time; it was some time late in the evening - when she came in to visit Justin, you said something to the effect, in response to a question about his condition, "Don't look at the best; look at the worst because he might not make it."

Indeed, I see in your own notes  
at page 213, about half-way down, that you record  
that, "The Cooks then asked me about his surgery and  
I explained he had been through a great deal that  
day and probably the best thing for them to do was  
to try and prepare themselves for the worst."

12 So, I take it whether or not we  
13 have the exact words of what was said, there is  
14 agreement that, at some point that evening, you  
15 suggested to them that, in respect of Justin, it  
16 might be best if they prepared themselves for the  
worst, in terms of his prognosis?

A. In terms of his surgery.

18 Q. Do I take it there is a  
19 distinction between that and him dying, or were you  
20 really saying to them, 'be prepared for him to die'?

21                   A.     I was answering their  
22     question about what would happen the next day in  
23     surgery or what was going to happen the next day when  
   he went for surgery. I can't remember exactly how

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Nelles  
cr.ex. (Hunt)

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GG5 2 they worded it but they asked me specifically about  
3 the surgery and, because I was asked specifically  
4 about the surgery and I was feeling that it was an  
5 emergency surgery and, given the information that I  
6 had and the information that they, as parents, were  
7 portraying to me, I was concerned that they had not  
8 ever faced any kind of possibility that he might not  
make it.

9 Q. So, in response to the  
10 specific question about the surgery the next day,  
11 you were telling them, 'be prepared for the worst';  
12 i.e. 'be prepared for Justin to die'?

13 A. To be prepared that that might  
14 be one of the outcomes, yes.

15 Q. So, you had knowledge, I  
16 believe, that that kind of a comment about a patient's  
17 prognosis was something that was usually done by  
the doctor?

18 A. Right.

19 Q. And you will agree with me  
20 that, to avoid having to tell them a lie about his  
21 condition and the surgery at that point, you could have  
22 told them the serious nature of the surgery and then  
23 referred them to a doctor or taken steps to get a  
doctor to speak to them about that?

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A. That was not my decision at  
the time.

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Q. I appreciate that, and I know  
you had to make a decision at the time, but that  
was open to you and still would have prevented you  
from having to tell them a lie?

7

A. I suppose, yes.

8

THE COMMISSIONER: I'm sorry, but  
what is the lie?

10

MR. HUNT: Miss Nelles indicated on  
Monday that the motivation for telling them this  
news was to avoid having to tell them a lie about,  
I take it, the welfare of the child.

13

THE WITNESS: That I thought every-  
thing would be rosy sort of thing.

15

THE COMMISSIONER: It was to avoid  
telling them a lie, she told them the truth?

17

MR. HUNT: That is right.

18

Q. So, the point here being that,  
in the late evening on the Saturday, you advised  
them, in respect to Justin's condition, to prepare  
for the worst?

21

A. To try and prepare, yes.

22

Q. When he died then five or  
six hours later, some time in the early morning hours,

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2 GG7 did you think back to your comment of the night  
3 before, five hours previous, to the Cooks about pre-  
4 paring for the worst - 'I wonder how they might take  
5 that'?

6 A. I don't remember if I did  
7 that. I could have.

8 Q. I take it though that it  
9 would not surprise you that they would remember a  
10 comment like that when their child died suspiciously  
11 five hours later?

12 A. Suspiciously?

13 Q. I'm saying it would not  
14 surprise you if it turns out that their child died  
15 suspiciously five hours after the comment was made;  
16 they would remember it?

17 A. They would remember what I  
18 said. I don't know whether I would term -- I would  
19 not have said that he died suspiciously.

20 Q. No, no. I am not asking you  
21 to comment on that. I am just saying that the facts  
22 as we have them here, lists it as one of the suspicious  
23 deaths in the Atlanta Report. If it turns out that  
24 the baby died five hours after the comment was made  
25 under suspicious circumstances, it won't surprise you  
that they remembered that?





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A. I remembered it, so I am not surprised that they remembered it.

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Q. And you are not sure whether you thought about that and the significance of that immediately after Justin Cook died?

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A. I am sure I remembered that I told them.

8

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Q. You are sure you remembered that you told them?

10

11

A. I think I remember that I told them but I don't remember thinking that they would think ill of that.

12

13

Q. Then we have as well heard about the comments that, again, my friend dealt with in his examination in chief of you, something to the effect of - and I am not trying to misquote it but, to the effect that 'six out of seven ain't bad' or 'four out of six ain't bad'.

18

19

This was attributed to you by a number of people, who suggested that the comment was made by you after the death of Justin Cook.

20

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Do you recall the comment I am talking about?

22

23

A. Yes, I do.

Q. Now, you, in giving your

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GG9 2 evidence, suggested, I believe, that you had never  
3 spoken to Lynn Johnstone about that comment?

4 A. I don't remember talking to  
5 Lynn about that, no, because she was not there at the  
6 time and I don't remember seeing her again afterwards.

7 Q. You appreciate that she has  
8 given evidence, at Volume 104, Mr. Commissioner,  
9 pages 3783 to 3786, that it was reported to her that  
10 you had made this comment and that she spoke to you  
11 about it and asked you, or suggested to you that  
12 you were not serious, to which you said, no, and she  
13 felt you were just dealing with your frustrations  
14 that way. Were you aware that she had said that?

15 A. I learned from her testimony  
16 that she had said that but I don't recall that she  
17 said that to me at the time, no.

18 Q. That did not refresh your  
19 memory as to any conversation you might have had  
20 with her?

21 A. It is my knowledge that I  
22 made that statement in the morning after Justin  
23 Cook died in the utility room and that she was not  
24 present and I did not see her again that morning. So,  
25 I can't understand how she could have heard it before  
then.





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Q. There is a difference in  
recollection between you and Lynn Johnstone as to  
whether or not she spoke to you about you having  
made the comment?

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A. Right.

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Q. In any event, I take it that,  
given the nature of the comment, and you have now  
explained the context in which you meant it, it  
doesn't surprise you that certain people recall  
having heard you make it?

11

12

A. In answer to your question  
that they recalled hearing...?

13

14

Q. It doesn't surprise you that  
they recall it, given the nature of the comment and  
the circumstances in which it was made?

15

16

A. Yes, it does surprise me to  
some extent.

17

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Q. Would you agree with me that  
on its face, without your explanation for it, it  
does appear a somewhat callous comment?

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A. Not in light of what had  
happened and that, in fact, what I was saying, that  
four or five or whatever out of seven babies had  
died in the last seven nights that we worked and that  
it was a fact, and my feeling when I expressed that





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GG11 2 was saying what a terrible record. In other words,  
3 how could anyone imagine such a record.

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GG11 2 was saying what a terrible record. In other words,  
3 how could anyone imagine such a record.

4 As I pointed out before, the

5 thing that I noted in looking at that statement was  
6 that the one person that viewed it as a callous remark  
7 and one that was in poor taste was the one person  
8 who had not been there during that time and could not  
9 possibly know what, as a team and what as nurses,  
we had been through.

10 Q. Of course, Miss Johnstone

11 indicates, in her recollection, she thought enough  
12 of it to approach you and confirm that you did not  
13 really mean that.

14 A. But she is the only one who

15 gives testimony that it was said before that morning.  
16 Everyone else recalls it that particular morning, and  
17 that is when I recall it.

18 Q. Really, you are giving me

19 an argument in favour of your interpretation contra  
Miss Johnstone's.

20 A. Which I can't do. I am saying

21 that I recall that I said something to that effect  
22 and that the people who were in the room at the time  
23 that I remember being in the room, Marie Mandal was  
the one who was not present who thought it was not an





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GG12 2 appropriate remark.

3 Q. Let us move on to Allana  
4 Miller. I take it you have heard about the evidence  
5 that Bertha Bell gave to this Commission concerning  
6 her seeing Phyllis Trayner injecting a medication into  
7 the buretrol of Allana Miller sometime at or shortly  
8 before 12 midnight on the night that she died?

9 A. Yes.

10 Q. And can I ask you, when you  
11 heard of that evidence, was that the first time you  
12 had ever heard of that?

13 A. Yes, it is.

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2 Q. And were you shocked when you  
3 heard that?

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5 A. Yes, I was.  
6 Q. And I take it you were  
7 shocked when you heard that because you realized  
8 that there was no medication prescribed to be given  
9 to Allana Miller at or shortly before 12 o'clock?

10

A. Right.

11

Q. And you appreciate that one  
12 of the ways in which Mrs. Bell picks the time of  
13 that administration is because she went into the room  
14 at the time you passed her in the hallway taking  
15 Justin Cook down to the echo lab?

16

A. Right.

17

Q. And you have indicated that  
18 you took Justin Cook down to the echo lab some time  
19 shortly after 11:45?

20

A. That's correct.

21

Q. And do I take it then that  
22 you confirm Mrs. Bell's evidence with respect to the  
23 time at which she thought you passed her on the way  
24 to the echo lab with Justin Cook, which is at or  
25 shortly before 12 midnight?

26

A. Yes.

27

Q. Now, insofar as the administration

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2 of gentamicin by Mrs. Trayner is concerned at 1  
3 o'clock, you indicated that you didn't specifically  
4 ask her to give the medication?

5 A. I can't remember, I can't  
6 remember, I may very well have asked her to give  
7 it.

8 Q. But the thing that did surprise  
9 you to some extent was that she brought the medication  
10 ticket and the medication down to show you before  
11 she administered it?

12 A. That was unusual, yes.

13 Q. So no question that for whatever  
14 reason she went out of her way to show you that at  
15 1 o'clock what she was doing was giving gentamicin  
16 to Baby Miller?

17 A. Yes.

18 Q. And you certainly didn't forget  
19 that?

20 A. That she gave the gentamicin?

21 Q. That she came down, went out  
22 of her way, came down and showed you that she was  
23 giving gentamicin to Allana Miller at 1 o'clock.

24 A. Right.

25 Q. Now we have discussed a little  
bit the matter of the meeting at Liz Radojewski's





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2 house on Monday night, the 23rd of March. I think  
3 you got into that a little bit this afternoon in  
4 terms of when you began to express that you were  
5 happy with an investigation being undertaken. I  
6 don't want to get into that meeting in any great  
7 detail myself, but I take it as of that night you  
8 were certainly aware of the situation regarding  
Baby Pacsai?

9

A. Yes.

10

Q. And really a rather extensive  
investigation underway by that time to determine  
what happened in that case?

11

A. I knew there was an inquest.

12

Q. You were also aware of the  
problems that had developed over the weekend in  
terms of locking up the digoxin, and the necessity  
of supervisors being on the ward on the Sunday and  
Monday?

13

A. I was informed of that.

14

Q. To supervise the administration  
of medication?

15

A. Yes.

16

Q. So as of the Monday night you  
were aware of a rather extensive serious  
investigation, or several parallel ones, that were

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taking place into digoxin, and at least the death of Baby Pacsai. At that point in time I think you indicated that your position that you expressed that night was that you welcomed this investigation because it was going to get to the bottom of what was happening?

A. I think I have to say that I did not link the investigation. I don't recall that I linked the investigations. I looked at, I knew that there was an inquest into Kevin Pacsai. I knew that the digoxin had been made a controlled drug, but I also knew that it had gone down to the lab, had been examined and had been brought back up to the floor and told that it was all right.

Q. When did you find out that?

A. On the Saturday night. I knew there was an investigation, because in terms of looking at the intravenous and what not of Justin Cook, which I thought of as, that they were checking whether in fact what those intravenous said they were they actually were. In other words we had made up, I know during that arrest a specific, I believe it was an imuran drip, not imuran, I am sorry, it was some kind of drip and we had actually had to prepare that solution, and it was my feeling that





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2 they were checking whether in fact what was labelled  
3 on that was what was in the bag.

4 Q. You also were aware that the  
5 inquest into Kevin Pacsai was an inquest into a  
6 death where the child had died with a tremendous  
7 level of digoxin in his blood?

8 A. Right.

9 Q. So do I take it from what you  
10 are saying is, that you can't recall, but you may  
11 have put together the fact that digoxin was involved  
12 in Kevin Pacsai's death with the events of the weekend,  
13 and viewed that as one investigation?

14 A. I did not, I did not link them.

15 Q. You did not for sure?

16 A. I did not link them.

17 Q. In any event as of that night  
18 your position was you welcomed this investigation?

19 A. Right.

20 Q. As something that would get to  
21 the bottom of what happened in Kevin Pacsai's death?

22 A. Right.

23 Q. And you were certainly relieved  
24 that that was going to be done?

25 A. That there was an inquest into  
Kevin Pacsai?





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Q. That there was going to be  
an investigation or an inquest into it?

3

A. The baby had died with a high  
level of digoxin, yes.

4

Q. You had prepared by that  
time, your notes?

5

A. Yes.

6

Q. With respect to that?

7

A. Yes.

8

Q. And so you were as of that  
night ready to proceed with that inquiry and co-  
operate and get to the bottom of it?

9

A. Right.

10

Q. Now, I am aware of the time  
and I can finish up relatively shortly here if you  
will permit me to, I may go a few minutes beyond  
4:30.

11

THE COMMISSIONER: Oh yes. Oh no,  
that's fine.

12

Q. Now my friend Mr. Sopinka  
took you through your whereabouts during the period  
in time in August, September, and October of 1981  
after you were arrested and charged. You have dealt  
with your whereabouts at the relevant time there.  
I want to ask you some questions about your knowledge

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2 as to certain pieces of information about Phyllis  
3 Trayner, I think some of them have already been asked  
4 and some have not. I will just review with you what  
5 I understand that you are saying. That is, first of  
6 all you didn't know where Phyllis Trayner lived?

7

8 A. I did not know her address,  
9 no. I had an idea where, what part of town she  
10 lived in.

11

12 Q. You didn't know where her  
13 husband worked?

14

15 A. I knew that he was an accountant,  
16 I knew that he was in the Army or had something to  
17 do with the Army Reserve but I did not know  
18 specifically where he worked.

19

20 Q. You didn't know where he  
21 was stationed in the Army?

22

23 A. I knew that he had gone to  
24 Camp Borden on a couple of occasions.

25

26 Q. You didn't know anything  
27 about any Armories where he may work out of here  
28 in Toronto?

29

30 A. No, I did not.

31

32 Q. You didn't know his Rank?

33

34 A. No, I did not.

35

36 Q. Or how he would be described

37

38





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8 2 when his Rank was used?

3 A. No, I didn't.

4 Q. Now I want to just ask you  
5 to listen to something I am going to read to you.  
6 It is from the evidence of Phyllis Trayner given  
7 at the Preliminary Inquiry with respect to where she  
8 did her banking, and I will ask you some questions.  
9 It is Volume 5, Mr. Commissioner, page 1088, and  
10 she was in cross-examination by Mr. Cooper and at  
about line 8:

11 "Q. So to your knowledge Susan Nelles  
12 would have no idea where you did your  
13 banking from anything you knew, isn't  
that true?

14 A. I think she probably - she may have  
15 known because I was having problems  
16 getting my money from one bank the  
17 Hospital was putting it into and trying  
18 to get it to my branch and that was  
19 talked about on the floor with the  
girls.

20 Q. All right. Would you have discussed  
21 where your branch was located?

22 A. Yes, I did.

23 Q. And who your manager was?

24

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2 "A. Not who the manager was, no.

3 Q. Not who the manager was. So that  
4 any of the girls on the floor would have  
5 known then where you did your banking?

6 A. Yes.

7 Q. Is that right?

8 A. That's correct."

9 Now, I should indicate in fairness  
10 to you that passage was put to Janet Brownless, who  
11 indicated that she had never heard any discussion  
12 by Phyllis Trayner with her, or anyone else, about  
13 where she did her banking, and I ask you the same  
14 question, was that a topic that was ever dis-  
15 cussed with you by Phyllis Trayner?

16 A. No, it was not.

17 Q. Did you ever hear her discussing  
18 with any other of your colleagues on the floor any  
19 question about her banking, of where she banked, her  
20 banking routines or any problems she was having?

21 A. No, I did not.

22 Q. So can I take from that that  
23 you know nothing about her branch, what bank she  
24 dealt with, where it was located?

25 A. No, I didn't.

Q. Now I just want to conclude





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2 by asking you again to look at Exhibit 383 which is  
3 the chart which has been prepared. Now, as you are  
4 well aware the deaths of the babies were listed down  
5 the left hand side and the deaths counted there are  
6 the deaths that are rated as suspicious deaths by  
7 the Atlanta Group that enquired into them.

8 It has been pointed out to you how  
9 many of these deaths involved you in a direct sense,  
10 inasmuch as you were either caring for the child;  
11 you were team leader on that particular occasion;  
12 and I think Mr. Lamek indicated that of 15 deaths  
13 on Ward 4A that you were present for, you were either  
14 caring for the child or were the team leader on all  
15 but one occasion?

16 A. Of the 29 here?

17 Q. No, of the 15 deaths that  
18 occurred on Ward 4A that you were present for, you  
19 were either caring for the child, or were the team  
20 leader on 14 of those 15 occasions, I think the one  
21 exception being Baby Thomas. Now it may be that the  
22 Commissioner will find --

23 A. I am sorry I am a bit confused.  
24 We are looking at all 29?

25 Q. Well, we are looking at all  
26 29.





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11 2 A. I don't know what you mean  
3 in terms of the 15.

4

Q. All right, let's start again.  
5 It was a question Mr. Lamek put to you yesterday.

6

A. I am sorry I don't understand  
the question.

7

Q. There are 29 deaths listed  
8 here, you were on duty for 22 of them.

9

A. Right.

10

Q. Phyllis Trayner was on duty for  
11 all 29 of them and you for 22 of them. Some of them  
12 occurred on 4A and some of them occurred on 4B. We  
13 know that you were assigned to the child that died,  
14 to look after the child, on 12 occasions out of the  
29.

15

A. Right.

16

Q. We also know that you were  
17 team leader on three occasions where the children  
18 died that are listed here.

19

So I am suggesting to you that in  
20 terms of the direct involvement with the children  
21 that died in the sense of either being assigned to  
22 care for them, or being a team leader on the night  
23 when those deaths occurred, you were directly involved  
24 in that sense. That is all I mean by that, in that

25





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2 sense in 15 of the total number of 29 deaths.

3

A. Right.

4

Q. And in that sense you were  
5 directly involved more than any other person?

6

THE COMMISSIONER: Well that's not  
true, there were 12 of them perhaps.

7

MR. HUNT: That's what I mean.

8

THE COMMISSIONER: The other three when  
9 she was team leader, you can't have it both ways.

10

MR. HUNT: All right, let's take the  
11 12, I am quite content to take the 12.

12

Q. In terms of just the children  
13 that you were responsible for caring for, 12 of  
14 those children who died out of these 29 and that  
15 is many more than any of the other nurses had  
16 assigned to them that were unfortunate enough to  
have died.

17

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II-1

2 Q. Now, Mr. Lamek refined it somewhat  
3 further yesterday and he said, look, 15 of these  
4 deaths that you were present for occurred on Ward 4A,  
5 which was your basic ward, and of the 15 that occurred  
6 there you were involved in the sense I'm using it in  
7 14 of them in the sense in 12 of them you were assigned  
8 to care for them - I'm sorry 11 of them you were  
9 assigned to care for them and three of them you were  
the team leader.

10 A. And I was only not there in one?

11 Q. On 4A.

12 A. Okay.

13 Q. All right. Does that come as a  
surprise to you?

14 A. I don't think that's correct.

15 I think that I can think of at least a couple that --

16 Q. Yes, that's what I have said, of  
17 the 15 for which you were there.

18 A. Okay.

19 Q. All right. Have you got it now?

20 A. Yes.

21 Q. My point being here that in terms  
22 of this involvement or apparent involvement by virtue  
23 of caring for the children or being the team leader  
24 you are touched by that more than any other nurse.

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II-2 2 Understand where I'm at right now?

3 A. Yes.

4 Q. All right. I'm saying to you  
5 that it may be that the Commissioner will find that  
6 all of these 29 children were intentionally killed.  
7 Now, assuming that and looking at your own position  
8 here and accepting that you have said that you have  
9 no responsibility for any of these deaths, does it  
10 cross your mind that someone may have been trying to  
11 discredit you and your abilities by virtue of the  
12 number of children whose deaths touched you directly  
13 in the sense we have discussed?

14 A. Are you asking me in retrospect  
15 or are you asking me at the time?

16 Q. I'm asking you that right now.

17 A. All right. That thought has  
18 occurred to me, yes.

19 Q. And would you agree with me that  
20 if someone wanted to discredit another nurse and  
21 discredit by casting a bad reflection on her ability  
22 to care, that there would be no better way of doing  
23 that than by intentionally killing babies who were  
24 assigned to that nurse to care for them?

25 A. I don't know.

26 Q. It's pretty hard to think of a





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II-3

2 worse way of doing it, isn't it?

3 A. My mind doesn't like to think  
4 that way I guess.

5 Q. I appreciate that.

6 Thank you, those are all the questions  
7 I have.

8 THE COMMISSIONER: Yes, all right,  
9 thank you.

10 Mr. Percival I won't call on you but  
11 have you any better idea now as to how long you will  
12 be?

13 MR. SOPINKA: He has undertaken to  
14 finish in the morning.

15 MR. PERCIVAL: I hadn't realized  
16 that - like Pinocchio, yes, in the morning.

17 THE COMMISSIONER: Finished in the  
18 morning.

19 Mr. Roland, how long will you be?

20 MR. ROLAND: I will be very short.

21 THE COMMISSIONER: Miss Kitely?

22 MS. KITELY: Perhaps half an hour,  
23 Sir.

24 THE COMMISSIONER: Miss Chown, how  
25 long will you be?

26 MS. CHOWN: About 10 minutes.





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THE COMMISSIONER: 10 minutes.

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MS. CRONK: Sir, I am having  
difficulty hearing you.

5

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7

THE COMMISSIONER: Oh. Oh, yes,  
I wonder if we could ask everyone. We will all  
be able to get out of here very shortly. Mr. Olah,  
how long will you be?

8

9

MR. OLAH: I would expect to be  
very short, Mr. Commissioner.

10

THE COMMISSIONER: Mr. Labow?

11

12

MR. LABOW: I would expect to

be at least an hour, Mr. Commissioner, maybe two.

13

THE COMMISSIONER: Mr. Shinehoft?

14

15

16

MR. SHINEHOFT: I don't expect to  
be that long, Mr. Commissioner, but I have a  
problem that I will be unable to be here on Monday  
and my request --

17

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MR. TOBIAS: I can solve

Mr. Shinehoft's problem because I can't be here  
tomorrow afternoon and I can be here on Monday  
morning.

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THE COMMISSIONER: I don't think  
there is any real purpose in sitting on Friday.

I can't guarantee that we will be finished even if  
we do sit on Friday and I think most of our





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5 accommodation problems are getting themselves  
3 resolved.

4

5

6 understand Mr. Sopinka has a problem early Monday  
7 morning, so, we probably won't start until 11 o'clock.  
8 Is that okay?

9

MR. SOPINKA: Yes.

10

11 THE COMMISSIONER: So, we probably  
12 won't start until 11 o'clock on Monday and that  
13 might be very helpful to Mr. Shanahan for one  
14 person I can think of and it will also make time --  
15 you can't come on Monday anyway?

16

17 MR. SHINEHOFT: No, I cannot,  
18 Mr. Commissioner.

19

20 THE COMMISSIONER: So, try to  
21 sort out your lives so that those who cannot be  
22 here on Monday will be able to cross-examine  
23 tomorrow and then we won't have a reply in any  
24 event before 11 o'clock and we won't have anything  
25 before 11 o'clock on Monday.

21

22

23 But until 10 o'clock tomorrow  
24 morning.

25

26 ---Whereupon the hearing adjourned at 4:40 p.m.  
27 until Thursday, April 5th, 1984 at 10:00 a.m.





